DISCUSSION DRAFT, AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 3534, DATED JUNE 22, 2010 (5:25 P.M.)

LEGISLATIVE HEARING

BEFORE THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

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LEGISLATIVE HEARING ON THE "DISCUSSION DRAFT, AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 3534, DATED JUNE 22, 2010 (5:25 P.M.)"

Wednesday, June 30, 2010
U.S. House of Representatives
Committee on Natural Resources
Washington, D.C.

The Committee met, pursuant to call, at 10:05 a.m. in Room 1324, Longworth House Office Building, The Honorable Nick J. Rahall, II, [Chairman of the Committee] presiding.

Present: Representatives Rahall, Napolitano, Holt, Grijalva, Bordallo, Costa, Boren, Heinrich, Lujan, Miller, Markey, Christensen, DeGette, Kind, Capps, Inslee, Baca, Sarbanes, Shea-Porter, Tsongas, Kratovil, Pierluisi, Hastings, Gallegly, Brown of South Carolina, McMorris Rodgers, Gohmert, Lamborn, Smith, Wittman, Broun of Georgia, Fleming, Coffman, Lummis, McClintock, and Cassidy.

STATEMENT OF HON. NICK J. RAHALL, II, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WEST VIRGINIA

The CHAIRMAN. The Committee on Natural Resources will come to order. Just as a way of housekeeping, I am sure all Members already know it, at approximately 10:30 a.m. we are going to have four votes on the House Floor so we can plan accordingly.

The Committee is meeting today to conduct a hearing on Discussion Draft Amendment in the Nature of a Substitute to H.R. 3534, the CLEAR Act. The CLEAR Act, introduced last year, was the subject of two days of hearings last September and was developed as a result of a long series of investigations, hearings and prior legislative efforts into the pressing need to reform both the offshore and onshore oil and gas leasing program.

Since I became Chairman of this Committee in 2007, we have held 20 hearings, had nine GAO reports done, and passed three bills out of the House during the last Congress, prior to the introduction of the CLEAR Act on matters it concerns.

The focus of the introduced version of this legislation is on royalty reform and enhanced planning processes for energy development on the Outer Continental Shelf, and an improved means to make Federal lands available for renewable energy leasing. The bill also seeks to fully fund the Land and Water Conservation

Fund, and establish a new oceans restoration fund based on the premise that we take everything from the ocean, but we put nothing back into it.

Further, it would have eliminated the Minerals Management Service and replaced it with a new entity. The disaster, which struck the Gulf of Mexico beginning on April 20th, was indeed a game changer. As a result of a number of hearings by this Committee since that date, intensive investigations and review of documents submitted by all the parties involved in the Deepwater Horizon incident, the Substitute retains, but builds upon, the introduced version of H.R. 3534 in three main respects.

First, it includes a focus on safety, not in a prescriptive fashion, which I believe may lead to freezing the development of new technology in its place, but in a more performance-based approach that mirrors the successful efforts of other countries, such as Norway and the United Kingdom.

Second, taking a lead from our witness today, the Secretary of the Interior Ken Salazar, it replaces the former Minerals Management Service with three entities, separating leasing, policing, and revenue management, and provides an organic act for the new Bureau of Energy and Resources Management, Bureau of Safety and Environmental Enforcement, and Office of Natural Resources Revenue.

And third, the Substitute would establish a Gulf of Mexico Restoration Program to provide an explicit statutory basis for what will be a long-term effort to address the devastating impacts of the Deepwater Horizon disaster on the environment and on local communities.

And I would note that none of the funds authorized or made available under the Substitute may be used to pay for any cost for which BP is liable. I would like to emphasize that the heading of the Substitute clearly reads "Discussion, Draft", "Discussion, Draft". It was made available one week ago and we will not go to markup until July 14. Therefore, I am providing ample opportunity for all interested parties to provide us with their views on this document, and I hope that will go out to members of the Committee that are not physically present today via their staffs.

I urge my colleagues who wish to see changes or offer amendments to the Substitute to contact the Committee as soon as possible as the markup will occur on the second day after we return from the July 4th recess, and I would like to be able to provide the markup vehicle to the Committee as soon as possible prior to our return.

[The prepared statement of Chairman Rahall follows:]

Statement of The Honorable Nick J. Rahall, II, Chairman, Committee on Natural Resources

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The CHAIRMAN. I now recognize the Ranking Member Mr. Hastings of Washington.

STATEMENT OF HON. DOC HASTINGS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Mr. HASTINGS. Thank you, Mr. Chairman.

Mr. Chairman, this hearing today should continue to focus on the crisis unfolding in the Gulf of Mexico because at this very moment the well is not capped and oil is still leaking. Oil is washing onto wetlands and beaches, threatening the environment and the wildlife, families are out of work, businesses are struggling to make ends meet, and the Gulf states are still struggling to get the resources they need to respond to the spill.

Unfortunately, instead of addressing the immediate crisis at hand there have been attempts to use this tragedy to impose a job-killing capital trade national energy tax and push legislation that is unrelated to the spill, or reforms in offshore drilling.

Just yesterday President Obama's senior energy and environmental advisor, Carol Browner, wrote an e-mail message advocating, and I quote in part, "The disaster in the Gulf be used to end our addiction to fossil fuels and pass comprehensive energy and climate legislation." The ongoing attempt by Democrats to exploit this crisis in order to push a national energy tax is clearly their best effort not to let a crisis go to waste, but it will not stop the leak, it will not provide relief to the people struggling in the

Gulf. It will, however, make the problem worse by increasing energy prices for all Americans and sending American jobs and companies overseas.

The bill we are discussing today was promoted as addressing the Deepwater Horizon rig explosion. However, most of its 200 pages have very little to do with this explosion and bill. There are numerous provisions completely unrelated to offshore drilling safety, and reform. Reforms are clearly needed to make American offshore drilling the safest in the world, but Congress should not get ahead of the facts and in a rush to write new laws.

Mr. Chairman, if all of us were to ask ourselves if we believe we have all the facts and information necessary to know exactly what changes need to be made in offshore drilling, the only honest answer is no. There is too much we don't know yet. There are bipartisan document requests that have gone unanswered by the Administration regarding the government's oversight of this specific well. This includes the last inspection report on the blowout preventer. Information has come to light about human errors that contributed to the explosion, but we still don't know why the emergency shutoff failed to work.

The blowout preventer is still a mile from the ocean surface, and we won't likely have the answers on what went wrong until it is retrieved and examined. Numerous investigations are underway, including the Presidential Commission, which has yet to even hold its first meeting. Why spend taxpayers' dollars on this commission if Congress has no intention of reviewing and considering its report and finding.

Congress must know what caused the disaster and then respond appropriately. This will ensure that Congress is not just making reforms for headlines and for political purposes, but making the right reforms to ensure that American drilling is the safest in the world.

Finally, it is vital that in these tough economic times that Congress knows what effect proposed new laws will have on American jobs, our economy, and our dependence on foreign energy. As we have seen from the Administration's moratorium on deep well drilling, impulsive decisions can have severe, long-term economic impacts. Solutions are supposed to help improve the situation in the Gulf, not make it worse. Congress must take extra care to ensure that any reforms will not cause greater economic damage than is already being felt as a result of this spill.

With that, Mr. Chairman, I will yield back my time.

The CHAIRMAN. The Chair will move directly now to hear from our first panel composed of The Honorable Ken Salazar, the Secretary, U.S. Department of the Interior, and he is accompanied by, and I understand the Director will have a statement to make as well, The Honorable Michael R. Bromwich, the Director of the Bureau of Ocean Energy Management, Regulation, and Enforcement, otherwise known as BOE, from the U.S. Department of the Interior.

Mr. Secretary, we welcome you once again to the Committee, and as I have done many times publicly, I commend you and your Department for the tremendous manner in which you have responded to this disaster. You have put all your resources available, and I commend you for that response. You may proceed as you desire.

STATEMENT OF HON. KEN SALAZAR, SECRETARY, U.S. DEPARTMENT OF THE INTERIOR

Secretary SALAZAR. Thank you very much, Chairman Rahall, and Ranking Member Hastings, and distinguished members of this Committee.

We continue our efforts on this day 71 with what has been a relentless effort to deal with the problem that we see unfolding in the Gulf. At the President's direction, we are not resting, and we will continue to move forward until we have the solutions, both with respect to the leak containment as well as continuing the reform efforts that we have been undertaking. I thought I would do a couple of things at the outset. First, bring the Committee up to date on what is happening with respect to the leak containment and the efforts to kill the well.

First, on the containment measures, in the last 24 hours about 25,000 barrels of oil were actually collected and contained and have been captured notwithstanding some high seas that have been as high as seven feet, and so that interim containment system is working.

Second, over the next few days the containment capacity that will be built out that we have been overseeing and working on will reach a capacity of 40 to 53 thousand barrels a day, and by mid-July the capacity that will be built out will be 60 to 80 thousand barrels a day.

As a part of the effort of the Federal team, which includes Secretary Chu and myself, the Navy and others who have been involved in this effort from the beginning, including our oversights at Houston, we have ordered these measures to be taken by BP so that we get the full leak containment and also that there are redundancies and efforts put into place that deal with contingencies hurricanes, and our hope is that moving into mid-July the 60 to 80 thousand barrels of oil will be able to be contained, most of the pollution currently emanating in the Gulf of Mexico, and then moving upwards from there with additional redundancies that are also being planned up to about 90,000 barrels a day if that should ever be needed.

Second, we have always known that ultimately the solution here is to kill this well, and as of this morning the current depth is now over 17,000 feet through the relief well. The relief well has a target of 17,758 feet. So in the next several weeks they will be getting down to the target depth, and then hopefully the efforts to kill this well will then move forward.

So that is a quick update on what is happening with respect to at least the source containment. There are huge efforts underway to fight the oil on the sea and near shore and onshore where 7,000 vessels are involved and nearly 40,000 people. The President, in the early days, through conversations with Secretary Gates, Secretary Napolitano and I, ordered the authorization of the Coast Guard. So far the states have called up around 2,000 members of the Coast Guard to help in the fight. There are still another 18,000 members that could be called up if the Governors themselves were to decide that that is what they want to do.

Let me move over quickly to the subject of this legislation and the Bureau of Ocean Energy Management, Regulation and Enforce-

ment. Last year, in September, I believe, I testified in front of this Committee and Chairman Rahall. At the time, I indicated to you that you were a pioneer and this Committee was really pioneering an effort that was long in coming, and I said that because I recognized then as I recognize today that when you have an agency that has such a critical responsible set of missions, the collection on the average of $13 billion a year on behalf of the American taxpayer, and assuring that the oil and gas production, which is so important to this country, is conducted in a safe manner, that organic legislation is in fact necessary.

So you were there, Mr. Chairman, and many members of this Committee long before this tragedy was there, and I remember testifying in support of you moving forward with that organic legislation. I think the events of the last 71 days have made it all the more clear that an agency of this importance needs to have that organic legislation.

I won't go over the fact I have gone over at other times but we have moved forward in the last 16 months with very strong efforts on ethics reforms, and hired former U.S. attorneys and independent prosecutors to essentially oversee this agency. There have been people who have been terminated, who no longer have jobs because of the ethics lapses of the past. That will now continue under Mike Bromwich, who has made major movement forward with respect to the Outer Continental Shelf and the plans that had been put out there prior to us coming on board as Secretary of the Interior. We have opened up a new chapter to renewable energy and are looking very much forward to working with all of you as we stand up offshore wind energy, especially in the Atlantic in the years ahead.

And finally, in the last two budgets we have moved increasingly to have the kinds of resources that can start policing these efforts in the OCS. From 2000 to 2008, the budgets for MMS essentially were flat lined. The budgets of the President's and the budget that this Congress approved over the last couple of years have helped us get to the point.

But having said that, there are going to be significant additional resources that will be needed, Chairman Rahall and Ranking Member Hastings, and members of the Committee, if we are to do the job that you all expect the Department of the Interior to do relative to assuring safety in the OCS in the development of oil and gas, as well as ensuring that the environment is protected.

With that, Mr. Chairman, what I would like to do is turn it over to Mike Bromwich, the Director of the Bureau of Ocean Energy for his comments.

[The prepared statement of Secretary Salazar follows:]

Statement of The Honorable Ken Salazar, Secretary, U.S. Department of the Interior

Chairman Rahall, Ranking Member Hastings, and Members of the Committee, I want to thank you for holding this hearing today as we continue to address the issues and challenges associated with the continuing reform of the Department of the Interior's offshore energy program.

Before we begin, I want to introduce Michael R. Bromwich, the new Director of the Bureau of Ocean Energy Management, Regulation, and Enforcement. His impressive background includes time as the Inspector General of the U.S. Department of Justice, as an Assistant U.S. Attorney, and since 1999, as an attorney in private

practice. His extensive experience in government and the private sector in improving the way organizations work make him an ideal choice to lead the restructuring and reform of the Department's offshore energy program.

For the same reasons I chose Michael Bromwich for this position, I chose Wilma Lewis who oversees the Department's energy bureaus as the Assistant Secretary for Land and Minerals Management. A former U.S. Attorney for the District of Columbia and Inspector General at the Department, Wilma has played a central leadership role in some of the most significant reforms during my tenure as Secretary. She has helped shape reforms ranging from our new approach to offshore oil and gas leasing and a new emphasis on renewable energy development on the Outer Continental Shelf, to ethics reform, to the enhancement of leasing programs and the development of renewable energy programs onshore, to support for our study of policies designed to ensure fair return to American taxpayers for the development of public oil and gas resources. I have also appointed her to chair the Safety Oversight Board in the aftermath of the Deepwater Horizon oil spill, and to help spearhead the reorganization of the Minerals Management Service (MMS) toward a new future.

Offshore Energy Reforms Completed

Although this unprecedented disaster, which resulted in the tragic loss of life and many injuries, is commanding our time and resources, it has also strengthened our resolve to continue reforming the Outer Continental Shelf (OCS) program.

The reforms we have embarked on over the last 17 months, and upon which we will continue to build, are substantive and systematic, not cosmetic. The kind of fundamental changes we are making do not come easily and many of the changes we have already made have raised the ire of industry. Our efforts at reform have been characterized by some as impediments and roadblocks to the development of domestic oil and gas resources. We believe, however, that they are crucial to ensuring that we carry out our responsibilities effectively, without compromise, and in a manner that facilitates the balanced, responsible, and sustainable development of the resources entrusted to us.

I want to review the reforms with you:

First, we focused our efforts on ethics and other concerns that had been raised in the revenue collection side of the MMS. We began changing the way the bureau does business and took the following concrete actions:

- upgraded and strengthened ethics standards throughout MMS and for all political and career employees;
- terminated the Royalty-in-Kind program to reduce the likelihood of fraud or collusion with industry in connection with the collection of royalties; and
- aggressively pursued continued implementation of the recommendations to improve the royalty collection program that came from the Department's Inspector General, the Government Accountability Office, and a committee chaired by former Senators Bob Kerrey and Jake Garn.

Second, we reformed the offshore oil and gas regulatory program, which included the following:

- initiated in the Fall of 2009 an independent study by an arm of the National Academy of Engineering to examine how we could upgrade our inspection and safety program for offshore rigs;
- procured substantial increases in the MMS budget for FY 2010 and FY 2011, including a ten percent increase in the number of inspectors for offshore facilities; and
- developed a new approach to on-going oil and gas activities on the OCS aimed at promoting the responsible, environmentally sound, and scientifically grounded development of oil and gas resources on the Outer Continental Shelf.

In that effort, we cancelled the upcoming Beaufort and Chukchi lease sales in the Arctic, removed Bristol Bay altogether from leasing both the current 5 year plan as well as the next 5 year plan, and removed the Pacific Coast and the Northeast entirely from any drilling under a new 5 year plan. We made clear that we will require full environmental analysis through an Environmental Impact Statement prior to any decision to lease in any additional areas, such as the mid and south Atlantic, and launched a scientific evaluation, led by the Director of the United States Geological Survey (USGS), to analyze issues associated with drilling in the Arctic.

Third, we laid the groundwork for expanding the mission of MMS beyond conventional oil and gas development by devoting significant attention and infusing new resources into the renewable energy program, thereby providing for a more balanced energy portfolio that reflects the President's priorities for clean energy. Toward that end, we:

- finalized long-stalled regulations that define a permitting process for off-shore wind—cutting through jurisdictional disputes with FERC in the process and ultimately approving the Cape Wind project;
- announced the establishment of a regional renewable energy office, located in Virginia, which will coordinate and expedite, as appropriate, the development of wind, solar, and other renewable energy resources on the Atlantic Outer Continental Shelf; and
- entered into an MOU with governors of East Coast states, which formally established an Atlantic Offshore Wind Energy Consortium to promote the efficient, orderly, and responsible development of wind resources on the Outer Continental Shelf through increased Federal-State cooperation.

Offshore Energy Reforms and Related Activities Underway

Since the Deepwater Horizon explosion and oil spill, the reforms and associated efforts have continued with urgency, with particular focus on lessons being learned from the circumstances surrounding the event. We are aggressively pursuing actions on multiple fronts, including:

- inspecting all deepwater oil and gas drilling operations in the Gulf of Mexico and issuance of a safety notice to all rig operators;
- implementing the 30-day safety report to the President, including issuing notices to lessees on new safety requirements, and developing new rules for safety and environmental protection; defending the suspension on new deepwater drilling, which is currently the subject of litigation; and
- implementing new requirements that operators submit information regarding blowout scenarios in their exploration plans—reversing a long standing exemption that resulted from too much reliance on industry to self-regulate.

Additional reforms will be influenced by several ongoing investigations and reviews, including the Deepwater Horizon Joint Investigation currently underway by the Bureau of Ocean Energy Management, Regulation and Enforcement, and the United States Coast Guard. In addition, at my request, a separate investigation is being undertaken by the National Academy of Engineering to conduct an independent, science-based analysis of the root causes of the oil spill. I also requested that the Inspector General's Office undertake an investigation to determine whether there was a failure of MMS personnel to adequately enforce standards or inspect the Deepwater Horizon.

Further, on April 30th I announced the formation of the Outer Continental Shelf Safety Oversight Board to identify, evaluate, and implement new safety requirements. The Board, which consists of Assistant Secretary for Land and Minerals Management Wilma A. Lewis, who serves as Chair, Assistant Secretary for Policy, Management and Budget Rhea Suh, and Acting Inspector General Mary Kendall, will develop recommendations designed to strengthen safety, and improve overall management, regulation, and oversight of operations on the Outer Continental Shelf.

Finally, the President established the independent bipartisan National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling tasked with providing options on how we can prevent and mitigate the impact of any future spills that result from offshore drilling. The Commission will be focused on the environmental and safety precautions we must build into our regulatory framework in order to ensure an event like this never happens again, taking into account the other investigations concerning the causes of the spill.

Supplemental Legislation

The Administration will make sure that BP and other responsible parties are held accountable, that they will pay the costs of the government in responding to the spill, and compensation for loss or damages that arise from the spill. We will do everything in our power to make our affected communities whole. As a part of the response efforts, we expect to spend a total of $27 million through June 30, 2010 for Interior's response activities.

As part of our reforms, we are also building on the efforts we undertook in the last seventeen months to strengthen the OCS budget. As I already mentioned, the President's 2011 budget includes a ten percent increase in the number of inspectors. Our restructuring of the OCS program will require additional resources to aggressively pursue the reforms I outlined earlier, to implement the 30-day report to the President, and to potentially address the results of ongoing investigations and the findings of the President's Commission. We are currently hiring an additional twelve inspectors, six more than we proposed in the 2011 budget, and we are taking other actions that are outlined in the 30-day report to the President. Over the course of the next several years, our restructuring of a more robust OCS regulatory

and enforcement program will dictate the need for engineering, technical, and other specialized staff.

The President's supplemental request of May 12, 2010, includes $29 million that will fund the near term resources we need for these activities. As you know, it is critically needed to support our full and relentless reforms—to bolster inspections of offshore oil and gas platforms, draft enforcement and safety regulations, and carry out environmental and engineering studies. The President's request included a proposal to extend the time allowed by statute for review and approval of oil and gas exploration plans from 30 to 90 days—this is also needed and I hope Congress will include it in the final version of the supplemental.

Reorganization of the Minerals Management Service

On June 15, I appointed Michael R. Bromwich as the Director, of the Bureau of Ocean Energy Management, Regulation and Enforcement. Michael will lead us through the reorganization—the foundation for the reforms we have underway. He will lead the changes in how the agency does business, implement the reforms that will raise the bar for safe and environmentally sound offshore oil and gas operations, and help our Nation transition to a clean energy future.

Michael will join the team that has been working out the details of the reorganization. In a May 19 Secretarial Order, I tasked Rhea Suh, the Assistant Secretary for Policy, Management and Budget, Wilma Lewis, the Assistant Secretary for Land and Minerals Management, and Chris Henderson, one of my senior advisors, to develop a reorganization plan in consultation with others within the Administration and with Congress. The report will provide the plan to restructure the Bureau of Ocean Energy Management, Regulation and Enforcement in order to responsibly address sustained development of the Outer Continent Shelf's conventional and renewable energy resources, including resource evaluation, planning, and other activities related to leasing; comprehensive oversight, safety, and environmental protection in all offshore energy activities; and royalty and revenue management including the collection and distribution of revenue, auditing and compliance, and asset management.

The Deepwater Horizon tragedy and the massive spill have made the importance and urgency of a reorganization of this nature ever more clear, particularly the creation of a separate and independent safety and environmental enforcement entity. We will responsibly and thoughtfully move to establish independence and separation for this critical mission so that the American people know they have a strong and independent organization ensuring that energy companies comply with their safety and environmental protection obligations.

The restructuring will also address any concerns about the incentives related to revenue collections. The OCS currently provides nearly 30 percent of the Nation's domestic oil production and almost 11 percent of its domestic natural gas production and is one of the largest sources of non-tax and non-trust revenue for the Treasury. The MMS collected an average of more than $13 billion annually for the past 5 years. There will be clear separation between the entities that collect and manage revenue and those that are responsible for the management of the OCS exploration and leasing activities.

Sustained Response Efforts in the Gulf

Of utmost importance to us is the oil spill containment and clean up of the Gulf. I have returned to the Gulf Region numerous times to help the Administration's effort to protect the coasts, wetlands, and wildlife threatened by this spill. We have deployed approximately 1,000 employees to the Gulf and they are directing actions to contain the spill; cleaning up affected coastal and marine areas under our jurisdiction; and assisting Gulf Coast residents with information related to the claims process, health and safety information, volunteer opportunities, and general information on the efforts being carried out in the region.

Under the direction of National Incident Commander Admiral Thad Allen and an effort co-led by me and Energy Secretary Steven Chu, we announced an improved estimate of how much oil is flowing from the leaking well. That estimate, suggests that the flow rate is at least 35,000 barrels per day, based on the improved quality and quantity of data that are now available.

The Department's senior staff continues to offer coordination and guidance to the effort. Deputy Secretary David J. Hayes is devoting his time to coordinating the many Gulf-related response activities we are undertaking. Assistant Secretary for Fish, Wildlife and Parks Tom Strickland has been leading the Department's efforts for onshore and near shore protection. National Park Service Director Jon Jarvis and Acting Director of the Fish and Wildlife Service Rowan Gould continue to supervise incident management personnel and activities that their bureaus are taking to

respond to the spill and clean up oil impacts. The NPS and FWS have dispatched approximately 590 employees to protect the eight national parks and 36 wildlife refuges and the numerous wildlife, birds, and historic structures they are responsible for in the Gulf of Mexico.

Representatives from the FWS also participated with the U.S. Coast Guard, the Environmental Protection Agency, National Oceanic and Atmospheric Administration and state and local governments in a series of public meetings with local residents to answer questions and offer information on a variety of topics related to the spill and response activities.

Finally, there are many, many people in the Department who are devoting significant time and energy to this event; to the various investigations and inquiries, both within the Administration and in Congress, that are being carried out; and to the ongoing reorganization and reform. I want to acknowledge their work and let them know their efforts are appreciated and are not going unnoticed.

Over the last couple of months, we have also seen what the employees in the Bureau of Ocean Energy Management, Regulation and Enforcement are capable of, their professionalism, their dedication to the Department, and their enthusiasm for the reforms underway. With Michael's help we will be able to cast aside the shadow on the many dedicated employees that has been left by an errant few, and by previous policies that have prioritized production over ethics, safety, and environmental protection.

H.R. 3534, the CLEAR Act

Mr. Chairman, last week you unveiled a new version of your comprehensive energy legislation, H.R. 3534, "the Consolidated Land, Energy, and Aquatic Resources Act." The Administration is carrying out a detailed review of this new version of your bill. While the primary focus of this legislation is the Department's mineral leasing programs, there are provisions of this bill that affect agencies other than the Department. It is important that the expertise of other affected agencies inform this process where appropriate. We will coordinate with other agencies in the Administration as we move forward with an evaluation of these important issues. Similarly, we expect that the findings of the recently-established Presidential Commission, the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, will also help inform decisions on what legislative changes are needed. However, I would like to offer some general comments on several provisions that specifically impact the Department.

When I testified before this Committee on the introduced version of H.R. 3534 last September, I indicated that the Department was in full agreement with the legislation's goals of ensuring a balanced and responsible approach to energy development on our public lands and waters and that dependable oversight and sensible reform of mineral royalty programs must be achieved. I also indicated that, like you, I support reforms of the mineral leasing process and programs that will enable us to manage our onshore and offshore resources more effectively and responsibly.

We have firmly supported the need for organic legislation for the functions performed by MMS. We agree that an organization with such important responsibilities should be governed by a thoughtfully considered organic act. It is important for organic legislation to provide the Secretary with the discretion to implement the details of a reorganization as complicated as this. The report and schedule for implementation that I will receive on July 9th will provide me with a detailed roadmap for this reorganization and will greatly inform the process. The Administration would like to provide the Committee with more detailed comments regarding the specifics in this legislation, including the appointment and confirmation of the new bureau and office heads.

Significant time and effort have been spent by senior staff at the Department detailing and analyzing reorganization of the functions carried out by the MMS. Section 101 of H.R. 3534 would include in the Bureau of Energy Resource Management the onshore energy management functions currently carried out by the Bureau of Land Management under its multiple use land management mandate. We will work with your Committee to further examine these provisions.

There are many other provisions in this bill of which we are generally supportive and would like to continue discussions with the Committee. For example, a number of changes in H.R. 3534 highlight the need for increased safety of operations and consideration of the marine and coastal environment, including the need for integrated programs for both environmental research and technological research and development. A focus on strengthened safety and oversight and the environmental impacts of offshore oil and gas operations are priorities of the Administration. We will work closely with other relevant agencies to ensure we develop a coordinated federal approach to address these objectives.

H.R. 3534 would extend the deadline for the Department to review and approve exploration plans; require that lessees obtain a drilling permit after approval of an exploration plan; and require that, prior to approval of such a permit, an engineering review of the well system be completed and reviewed. It also includes new planning requirements for detailed descriptions of equipment and plans to address potential well blowouts. The Administration supports authority to provide for longer review time of exploration plans to allow for stronger reviews of exploration plans prior to drilling.

Recognizing the importance of this information, on June 18, 2010, the Department issued a Notice to Lessees (NTL) requiring that new filings for drilling permits, exploration plans, or development plans to contain information specifically addressing the possibility of a blowout and the detailed steps that lessees or operators would take to prevent blowouts. This reverses a 2003 policy and a 2008 NTL that exempted many offshore oil and gas operations in the Gulf from submitting certain information about such a scenario and is consistent with the requirements contained in these bills.

We are also supportive of the changes in H.R. 3534 intended to strengthen civil and criminal penalties contained in the OCSLA. These provisions are generally consistent with the support for increasing these penalties that we have expressed in recent appearances before Congress. The Department is also supportive of adding language to the OCSLA authorizing the imposition of civil judicial penalties for violations of the Act.

It is also important that the Department have the tools necessary to efficiently and effectively carry out the duties related to offshore energy development, including to appropriately staff critical and hard-to-fill positions in these new entities. We look forward to working with the Committee and other agencies on the provisions in H.R. 3534 that address this issue. Provisions addressing royalty-related reforms may also be an important component of this reorganization. While additional time is needed to analyze the inclusion of a number of significant provisions, we do support the repeal of the royalty relief provision contained in section 344 of the Energy Policy Act of 2005 as this repeal is consistent with the President's fiscal year 2011 budget request.

The President's June 12, 2009 memorandum creating an Ocean Policy Task Force envisions a comprehensive, national approach to ocean planning. The Department is currently involved in a multi-agency process to develop a new national ocean policy that is intended to look ahead in the long term to help the United States think comprehensively about how we make better informed management decisions regarding the use and conservation of ocean, coastal, and Great Lakes resources. The Department supports the approach of the President's Task Force.

Finally, the Administration appreciates your focus on ensuring comprehensive and long-term restoration of the Gulf of Mexico in the wake of this tragedy. As the President has made clear, a long-term plan is needed to restore this unique coastal region from the effects of this tragedy, just the latest blow to befall the people and environment of this special place. The Administration is already moving forward with this plan, and the President has asked Secretary of the Navy Ray Mabus to develop a long-term Gulf Coast Restoration Support Plan that will include input by states, local communities, tribes, fishermen, businesses, conservationists, and other Gulf residents.

Conclusion

Much of my time as Secretary of the Interior has been spent working to promote reform of prior practices in the MMS and to advance the President's vision of a new energy future that will help us to move away from spending hundreds of billions of dollars each year on imported oil. A balanced program of safe and environmentally responsible offshore energy development is a necessary part of that future. Our efforts to develop a robust OCS renewable energy program are a major part of the effort to find that balance and help move our Nation toward a clean energy future. However, we also recognize that, for now, conventional oil and gas continues to play a significant role in our economy. As we evaluate new areas for potential oil and gas exploration and development on the OCS, we will conduct thorough environmental analysis and scientific study, gather public input and comment, and carefully examine the potential safety and spill risk considerations.

The findings of the Joint Investigation and the independent National Academy of Engineering will provide us with the facts and help us understand what happened on the Deepwater Horizon. Those findings, the work of the Outer Continental Shelf Safety Oversight Board, the OIG investigation and review, and the findings of the Presidential Commission will help inform the implementation of the Administration's comprehensive energy strategy for the OCS.

We are taking responsible action to address the safety of other offshore oil and gas operations, further tightening our oversight of industry's practices through a package of reforms, and taking a careful look at the questions this disaster is raising. We will also work with you on legislative reforms and the finalization of a reorganization that will ensure that the OCS program is effectively managed to achieve these goals.

Lastly, let me assure you this Administration will continue its relentless response to the Deepwater Horizon tragedy. Our team is committed to help the people and communities of the Gulf Coast region persevere through this disaster, to protect our important places and resources, and to take actions based on the valuable lessons learned that will help prevent similar spills in the future.

Response to questions submitted for the record by the U.S. Department of the Interior on H.R. 3534, "CLEAR Act"

Questions submitted by Rep. Kind

1. Secretary Salazar, the bill requires that industry provide information to regulators on how long it would take to drill a relief well. I'm concerned this doesn't go far enough. Right now, the only proven technology that government and industry know of to stop oil from spewing into the ocean is the drilling of a relief well. Wouldn't it be advantageous to drill at least a partial relief well concurrently with the regular drill well?

Response: We are continuing to actively determine the best strategies to ensure enhanced worker safety and health and environmental safety standards for offshore operations. We are undertaking aggressive and comprehensive reforms to offshore oil and gas regulation and oversight. This includes the reorganization of the former Minerals Management Service, as well as the implementation of tougher standards in the drilling and production stages, for equipment, safety practices, and environmental safeguards. The temporary suspensions of deepwater drilling, which were lifted on October 12, 2010, allowed the Department time for investigation and implementation of needed new safety, containment and oil spill response capability measures. Secretary Salazar based his decision to lift the deepwater drilling suspensions on information gathered in recent months, including a report from BOEMRE Director Michael Bromwich on October 1, that shows significant progress in reforms to drilling and workplace safety regulations and standards, increased availability of oil spill response resources since the Macondo well was contained on July 15 and killed on September 19, and improved blowout containment capabilities.

The continued collection and analysis of key evidence regarding the potential causes of the *Deepwater Horizon* explosion will help inform our ongoing analysis. The Administration strongly supported House passage of the CLEAR Act, which would provide authority to strengthen environmental reviews of offshore drilling plans, reform revenue collection, and implement a more extensive system of inspections of offshore energy activities.

Regarding the drilling of relief wells, it may seem reasonable to assume that relief wells reduce risk, and that we could save time responding to any blowout by requiring operators to drill a relief well alongside each well drilled in the Gulf of Mexico. However, the risk of a blowout in the relief well may be the same as the risk of a blowout in the initial well. This increased risk is a direct result of drilling twice as many wells into a formation. Each well drilled increases the risk of a blowout simply because each well presents its own unique geologic and engineering risks. Relief wells have historically been an effective method to stop the flow of oil from the bottom of a well blowout and begin the process of pumping cement to abandon the well. However, both the risk and costs of drilling relief wells dictate that they are typically only drilled when necessary to respond to a well blowout. As demonstrated with the Deepwater Horizon response, there are other deepwater well containment options that may be faster and equally effective way in reducing or stopping the flow of oil into the ocean. BOEMRE is in the process of establishing enforceable mechanisms to ensure the availability of blowout containment resources. And industry commitments have been made for new investments in designing and developing a multi-scenario, multi-component containment system.

2. Secretary Salazar, there are a lot of layers of oversight in this bill, separate agencies and independent third party certification of equipment. While I support these reforms, will they even matter in the event of another blowout? Right now, if there is another blowout and subsequent leak, we will have to wait over three months for a relief well to stop the

flow of oil, correct? There isn't any technology developed or being developed that can successfully stop the flow of oil?

Response: The Bromwich report referenced above evidences the hard work carried out and progress made since the *Deepwater Horizon* disaster in April in addressing drilling safety, blowout containment, and spill response.

New safety measures, including requirements relating to the functionality and testing of blowout preventers and the design, construction and cementing of wells, have been put in place. Significant developments and improvements have been made in deepwater well containment technology and equipment; the management and coordination of containment operations and logistics; and the drilling of relief wells. BOEMRE is in the process of establishing enforceable mechanisms to ensure the availability of blowout containment resources. And industry commitments have been made for new investments in designing and developing a multi-scenario, multi-component containment system.

The resources available for other response activity today, should another spill occur, have increased significantly from critical levels present shortly after the Deepwater Horizon incident. Most of the resources such as personnel, vessels, and containment boom used during the spill are no longer deployed therefore eliminating the urgent concern about the sufficiency of resources to respond to another potential oil spill.

3. Secretary Salazar, what does the Department of Interior think would be the best approach to increasing research and develop technology that will prevent and stop an oil spill?

Response: The Administration specifically supported the provisions in H.R. 3534 to remove the arbitrary limit on liability for damages caused by offshore drilling because it will create incentives for the oil and gas industry to comply with new health and environmental safety standards and seek out and implement best practices to do so.

Also in July the Department issued its implementation plan for restructuring the offshore energy management responsibilities under its jurisdiction. The plan calls for the creation of the Bureau of Safety and Environmental Enforcement, tasked with promoting and enforcing safety in offshore energy exploration and production operations and assuring that potential negative environmental and other impacts on marine ecosystems and coastal communities are appropriately considered and mitigated, and to continue research activities to support evolving regulatory needs as technologies advance.

Questions submitted by Rep. Luján

1. Secretary Salazar, the draft legislation under discussion would require the use of "best available technology" for new Outer Continental Shelf drilling permits, with the Secretary of the Interior identifying what constitutes "best available technology" every 3 years. How do you foresee this identification of best available technology working and do you think it will spur or inhibit innovation in development of new technologies?

Response: The details of such a process are typically finalized once specific language has been enacted into law. Nevertheless, under current offshore regulatory processes, the Department reviews an operator's exploration or development plans and Applications for Permits to Drill to verify the use of best available and safest technology and inspections verify the use of approved equipment and maintenance of that equipment. Thus the Department has a parallel base of knowledge and experience and would expect to build on that knowledge base. However, the results of the several ongoing investigations of the event will inform the long-term responses.

2. Secretary Salazar, the BLM currently collects rent payments from solar energy right-of-way authorizations. The agency also collects a "megawatt capacity fee" that is based on the total authorized megawatt capacity for the approved solar energy project. These megawatt capacity fees charge different fees for different solar technologies and have a rate structure that may actually penalize technologies that are more efficient and use less land. I understand that the Bureau is seeking to collect fair market value for renewable energy production on public land, however these megawatt capacity fees vary with different solar technologies and operate on a rate structure that may discourage renewable energy technology development. As you know, clean, renewable energy technologies provide taxpayers benefits beyond electricity generation, and I would like to know how the agency intends to ensure that renewable energy

revenue collection is based on a sound, fair methodology that promotes efficient generation of clean energy on public lands?

Response: The BLM is required by the Federal Land Policy and Management Act to collect an annual rental payment for right-of-way authorizations on the public lands, and that statute requires that rents for these authorizations reflect the fair market value for the use of the public lands. The solar rental schedule, issued by the BLM in early June, was developed based on review and analysis by the Department, the BLM, and the U.S. Department of Energy of economic models comparing the effects various rental rates may have on different kinds of solar projects. It is explained in detail in the instructional memorandum found at: http://www.blm.gov/wo/st/en/info/regulations/Instruction__Memos__and__Bulletins/national__instruction/2010/IM__2010–141.html. The new rental schedule provides certainty to solar operators and ensures a fair return to American taxpayers for the use of their public lands.

Questions submitted by Rep. Tsongas

1. **Secretary Salazar, this week I am introducing legislation requiring oil companies to address a worst-case scenario oil spill, like the one that we are dealing with in the Gulf of Mexico, as a condition to being granted rights to explore or drill for oil off our coastline. It would build on the requirements in the CLEAR Act by requiring additional safeguards to protect our oceans and coastlines from another catastrophic spill. Having dealt with a worst-case scenario spill over the last few months and its tragic and ongoing consequences, what requirements and safeguards do you think are absolutely necessary to have in place to effectively respond to a future worst-case scenario spill? And how do we force regulators to imagine new scenarios that we possibly have not yet considered?**

Response: The Administration strongly supported House passage of H.R. 3534, which contains many provisions that would give the Department additional authorities to promote enhanced health and environmental safety standards for offshore operations, strengthen environmental reviews of offshore drilling plans, reform revenue collection, and implement a more extensive system of inspections of offshore energy activities. The results of the ongoing investigations into the root cause of the tragedy will provide us with key information to consider, but the October 1, 2010, report from BOEMRE Director Bromwich provides a comprehensive look at the progress made on important requirements and safeguards that the Department believes are necessary to address drilling safety, blowout containment, and spill response.

These include new safety measures, including requirements relating to the functionality and testing of blowout preventers and the design, construction and cementing of wells that have been put in place since April 20. In addition, BOEMRE issued a Notice to Lessees with requirements for the calculation of worst-case discharges and submittal of information of measures undertaken to prevent a blowout, reduce the likelihood of a blowout, and conduct effective and early intervention in the event of a blowout. Significant developments and improvements have been made in deepwater well containment technology and equipment; the management and coordination of containment operations and logistics; and the drilling of relief wells. BOEMRE is in the process of establishing enforceable mechanisms to ensure the availability of blowout containment resources. And industry commitments have been made for new investments in designing and developing a multi-scenario, multi-component containment system. These measures are essential to protecting communities, coasts, and wildlife from the risks that deepwater drilling poses.

2. **Secretary Salazar, in a previous hearing before the Energy and Mineral Resources Subcommittee, Mr. Frank Rusco, Director of Natural Resources and Environment at GAO, stated that GAO found that there were system-wide and pervasive problems at the Interior Department in attracting and retaining expert employees for safety, equipment, and production inspections, and that it would be absolutely necessary to address this issue in any reorganization of the MMS. In your opinion, does the current draft legislation address this issue sufficiently, or do you have any suggestions for improving the ability for the Department of the Interior to attract and retain the experts necessary to oversee offshore oil and gas production?**

Response: Over the course of the next several years, the restructuring of the Department's Outer Continental Shelf programs will dictate the need for engineering,

technical, and other specialized staff, particularly in the regulatory and enforcement program. This is an important issue and one the Department and Administration are already addressing. The President's 2011 budget amendment, released on September 13, 2010, includes an additional $100 million for BOEM reform efforts, including funding for more inspectors. The amendment also proposes raising inspections fees from $10 million to $45 million to partially offset these added costs. We are in the process of hiring an additional 12 inspectors and are taking other actions that are outlined in the 30-day report to the President. Our restructuring of BOEMRE to achieve a more robust OCS regulatory and enforcement program will dictate the need for engineering, technical, and other specialized staff. The President's enacted supplemental request includes $27 million to fund near term resources for these activities. The Administration strongly supported House passage of H.R. 3534, which contains provisions intended to advance this effort in the areas of hiring and training. The Administration looks forward to working with Congress to improve the bill as it proceeds through the legislative process.

Questions for Director Bromwich

Questions submitted by Rep. DeGette

1. Director Bromwich, would the Department of the Interior support a requirement to disclose the chemicals used in hydraulic fracturing fluids in onshore oil and gas drilling on BLM land?

Response: DOI believes transparency is important in order to effectively manage oil and gas drilling on Federal lands. The Department is currently evaluating ways to enhance transparency with respect to chemicals used for hydraulic fracturing. We are also identifying opportunities to collaborate with other agencies and key stakeholders to ensure safe natural gas development on Federal lands

Questions submitted by Rep. Kind

1. Director Bromwich, this bill proposes significant reforms to the regulatory agencies that oversee the oil and gas industry. Do you feel these reforms will actually be able to end the culture of coziness between industry and government regulators?

Response: Setting expectations for agency transparency and accountability through clear legislative direction is an important step. In addition to the reforms presented in the bill, there are also departmental reforms underway. One such reform is the formation of an Investigations and Review Unit within the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) which will look into allegations of misconduct against the companies we regulate as well as bureau personnel. In addition, we have recently developed a conflict of interest/recusal policy designed specifically to address claims that some regulatory and enforcement decisions were being made based on relationships rather than the facts. That policy was effective immediately when issued in August and applies to all offshore inspectors.

These reforms, both proposed through legislation and the department, will take time to implement. However, I am extremely confident in the honest and dedicated employees within the BOEMRE, and implementing the reforms is a top bureau priority that will help restore the trust of the American public in our oversight of the oil and gas industry.

2. Director Bromwich, do you support the creation of a National Oil and Gas Health and Safety Academy to provide initial and continued training for regulators?

Response: BOEMRE is in the process of implementing significant reforms to its training programs which will allow for consistent initial and continued training in areas including health, safety, environmental compliance, and operations. The implementation of specific educational programs for regulators is contingent upon available funding.

Questions submitted by Rep. Tsongas

1. Director Bromwich, this week, I am introducing legislation requiring oil companies to address a worst-case scenario oil spill, like the one that we are dealing with in the Gulf of Mexico, as a condition to being granted rights to explore or drill for oil off our coastline. It would build on the requirements in the CLEAR Act by requiring additional safeguards to protect our oceans and coastlines from another catastrophic spill. Having dealt with a worst-case scenario spill over the last few months and

its tragic and ongoing consequences, what requirements and safeguards do you think are absolutely necessary to have in place to effectively respond to a future worst-case scenario spill? And how do we force regulators to imagine new scenarios that we possibly have not yet considered?

Response: The Administration strongly supported House passage of H.R. 3534, which contains many provisions that would give the Department additional authorities to promote enhanced health and environmental safety standards for offshore operations, strengthen environmental reviews of offshore drilling plans, reform revenue collection, and implement a more extensive system of inspections of offshore energy activities. The results of the ongoing investigations into the root cause of the tragedy will provide us with key information to consider, but the October 1, 2010, report from BOEMRE Director Bromwich provides a comprehensive look at the progress made on important requirements and safeguards that the Department believes are necessary to address drilling safety, blowout containment, and spill response.

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2. Director Bromwich, in a previous hearing before the Energy and Mineral Resources Subcommittee, Mr. Frank Rusco, Director of Natural Resources and Environment at GAO, stated that GAO found that there were system-wide and pervasive problems at the Interior Department in attracting and retaining expert employees for safety, equipment, and production inspections, and that it would be absolutely necessary to address this issue in any reorganization of the MMS. In your opinion, does the current draft legislation address this issue sufficiently, or do you have any suggestions for improving the ability of the Department of the Interior to attract and retain the experts necessary to oversee offshore oil and gas production?

Response: Over the course of the next several years, the restructuring of the Department's Outer Continental Shelf programs will dictate the need for engineering, technical, and other specialized staff, particularly in the regulatory and enforcement program. This is an important issue and one the Department and Administration are already addressing. The President's 2011 budget amendment, released on September 13, 2010, includes an additional $100 million for BOEM reform efforts, including funding for more inspectors. The amendment also proposes raising inspections fees from $10 million to $45 million to partially offset these added costs. We are in the process of hiring an additional 12 inspectors and are taking other actions that are outlined in the 30-day report to the President. Our restructuring of BOEMRE to achieve a more robust OCS regulatory and enforcement program will dictate the need for engineering, technical, and other specialized staff. The President's enacted supplemental request includes $27 million to fund near term resources for these activities. The Administration strongly supported House passage of H.R. 3534, which contains provisions intended to advance this effort in the areas of hiring and training. The Administration looks forward to working with Congress to improve the bill as it proceeds through the legislative process. to oversee offshore oil and gas production?

The CHAIRMAN. Mr. Director, our condolences—I mean congratulations to you on your new position, and we look forward to working with you. You come from impeccable background, which is quite impressive, and certainly you are the man for the job.

STATEMENT OF HON. MICHAEL R. BROMWICH, DIRECTOR, BUREAU OF OCEAN ENERGY MANAGEMENT, REGULATION, AND ENFORCEMENT, U.S. DEPARTMENT OF THE INTERIOR

Mr. BROMWICH. Thank you, Mr. Chairman, Ranking Member Hastings, and other distinguished members of the Committee.

There is a prepared statement that really goes mostly into my background that I gather is in the record and so I won't talk about that. I will be very brief. I want to talk about three concrete things that have been done in the eight days that I have now been on the job as the head of the agency.

The first is the renaming of the agency from the former MMS to the Bureau of Ocean Energy Management, Regulation, and Enforcement. That was a decision by the Secretary to demonstrate that there is going to be a change and renewed focus for the agency, and that the focus is going to be now on proper and forceful regulation and enforcement in a way that had not been the case over the prior years. So the name is symbolic, but it is also real and it reflects a commitment to a new purpose and a new attitude toward regulation and enforcement.

The second is the creation of an internal unit within the Bureau, which we are calling the Investigations and Review Unit. It was something I proposed to the Secretary on my first day. It is something he approved on my second day, and it is something that now exists and we are looking to staff it as quickly as possible.

The new unit, the IRU, will be staffed with experienced prosecutors, investigators, scientists, and other personnel that will allow us to undertake prompt and aggressive enforcement action both with respect to allegations of misconduct against people in my agency, but also with respect to companies and other participants in the industry that we regulation. I am determined to be aggressive. This unit will help me be aggressive, and I am determined to be prompt in bringing appropriate enforcement action.

The third and final point is something that I want to announce this morning, which is that we are imposing a fine of $5.2 million on BP America for false, inaccurate, and misleading reports submitted over a long period of time on energy production on the Southern Ute tribal lands in southwestern Colorado. A lot of the work was done by Southern Ute tribal auditors who initially discovered the problems. The problems were brought to the attention of BP America. The problems were not fixed, and as a result we concluded that the reporting violations were not accidental, but in fact knowing and willful.

This has been in the works for awhile. It is not something that I produced in eight days. I think it is a reflection of the hard and serious work that people in my agency have done over time, but it does reflect a seriousness of purpose and an intent to be aggressive in pursuing violations of companies' obligations in their dealing with royalties and other aspects of the program sunder my bureau's supervision.

So with that, Mr. Chairman, that concludes my opening statement, and I am obviously happy to answer any questions that I can later on.

[The prepared statement of Mr. Bromwich follows:]

Statement of The Honorable Michael R. Bromwich, Director, Bureau of Ocean Energy Management, Regulation, and Enforcement (BOE), U.S. Department of the Interior

Thank you, Chairman Rahall, Ranking Member Hastings, and Members of the Committee for the opportunity to be here today with Secretary Salazar. I appreciate being included in this hearing and being part of the discussions about reorganization of the Outer Continental Shelf program.

Overview

My appointment as the new Director started one week ago Monday, and therefore I have had only a short amount of time to begin to understand the Bureau's programs, operations, and challenges. I would like to take my time to introduce myself and give you an overview of my vision and goals.

When the President and Secretary Salazar asked me to take this assignment, I was a partner in the firm of Fried Frank. I headed the firm's Internal Investigations, Compliance and Monitoring practice group and concentrated on conducting internal investigations for private companies and other organizations; providing monitoring and oversight services in connection with public and private litigation and government enforcement actions; and representing institutions and individuals in white-collar criminal and regulatory matters. I also provided crisis management assistance and counseling.

Even while in private practice I have had significant experience with turning around troubled government agencies. I served for six years as the Independent Monitor for the District of Columbia's Metropolitan Police Department and had just begun performing the same role for the Virgin Islands Police Department, which involved overseeing sweeping reforms of those Departments' use of force programs. I also conducted a comprehensive investigation of the Houston Police Department's Crime Lab and provided HPD with extensive recommendations for reforming its Crime Lab, which had a long history of very serious problems.

In the private sector, I have conducted many major internal investigations for companies, including in the energy industry; reviewed the compliance programs and policies of major companies in a variety of industries, conducted extensive field reviews of such programs and made recommendations for their improvement; and represented companies and individuals in state and federal enforcement proceedings and criminal investigations.

From 1994 to 1999, I was the Inspector General for the Department of Justice. I conducted special investigations into allegations of misconduct, defective procedures and incompetence in the Federal Bureau of Investigation Laboratory; the FBI's conduct and activities regarding the Aldrich Ames matter; the handling of classified information by the FBI and the Department of Justice in the campaign finance investigation; the alleged deception of a Congressional delegation by high-ranking officials of the Immigration and Naturalization Service; and the Justice Department's role in the CIA crack cocaine controversy.

From 1987 through 1989, I served as Associate Counsel in the Office of Independent Counsel for Iran-Contra. In January through May 1989, I was one of three courtroom lawyers for the government in the case of *United States v. Oliver L. North.* I supervised a team of prosecutors and law enforcement agents that investigated allegations of criminal misconduct against government officials and private citizens in connection with provision of aid to the Contras in Nicaragua and serving as overall coordinator of the Iran-Contra grand jury.

From 1983 to 1987, I served as an Assistant U.S. Attorney in the U.S. Attorney's Office for the Southern District of New York. During my tenure, I tried many lengthy and complex cases and argued many appellate matters before the Second Circuit. I served as Deputy Chief and Chief of the Office's Narcotics Unit.

From those experiences dealing with many organizations and institutions, I have accumulated substantial experience in seeing what works and what does not in organizations. I have had experience leading government agencies, as well as reviewing the leadership styles in many agencies. Based on that experience, I am confident that I can lead this organization and implement the changes that are necessary.

Bureau of Ocean Energy Management, Regulation and Enforcement

As I said, I began my service as the Director, Bureau of Ocean Energy Management, Regulation and Enforcement on June 21, 2010. So far, my understanding of the events surrounding the Deepwater Horizon catastrophe are primarily based on the news coverage, what I have read, and initial conversations with Department of the Interior personnel. Therefore, my knowledge of the Bureau, its employees and its programs is at a very early stage.

I look forward to becoming well-versed in the complex regulatory regime governing offshore oil and gas exploration and drilling and the nation's emerging and promising offshore renewable programs. It already is apparent that the programs that this Bureau manages are technologically complex and involve a highly specialized workforce. As an agency, we will be thinking carefully about, and proceeding quickly with, reforming the way the Bureau does business and oversees energy exploration and development.

My goal is to develop a set of recommendations for the Secretary and the President that will improve the way the organization works. I am committed to eliminating improper incentives and influences, creating a culture for the OCS program that is devoted to vigorous and effective regulation and enforcement, and establishing the Bureau as an agency that is focused on safety and environmental protections. To provide us with the capacity to meet these commitments, I announced yesterday the establishment of an investigations and review unit within the Bureau that can act quickly and will report directly to me.

I understand that the Department has been conducting an extensive analysis of the organization, its programs, and best practices in other countries and other agencies. I will take advantage of the work that has already been done. We expect to release a plan in the coming weeks that will guide the reorganization. I look forward to talking with you and getting your input to educate this process.

These are important issues for the President, the Congress and the Nation. Under Interior's management, the Outer Continental Shelf currently provides 30 percent of the Nation's domestic oil production and almost 11 percent of its domestic natural gas production. The Nation currently relies on the OCS program to continue to make available the energy resources that we and our economy need. I look forward to the challenges ahead, and to ensuring that we manage the development of the Nation's energy resources, while at the same time enforcing the law and aggressively regulating oil and gas exploration and drilling to ensure that this activity is conducted in a manner that is safe for workers and the environment. Thank you.

The CHAIRMAN. Thank you, Director Bromwich, for that announcement that you have just made this morning. I commend you and members of your agency that have so diligently been pursuing this issue for a number of years now.

Mr. Secretary, I am well aware of your support for protecting our American landscapes and your support for the great American outdoors. In your opinion, would the full funding of the LWCF in this bill help you in those efforts?

Secretary SALAZAR. Mr. Chairman, the answer is yes. President Obama has initiated a conversation with America called the "America's Great Outdoor Effort". There have been listening sessions in places Montana, and Maryland. There will be some in Colorado and all over this country, and our view has been that it is time for America to move forward with a new conservation agenda that meets the needs and challenges of the twenty-first century.

And as the Chairman is well aware, the Land and Water Conservation Fund, frankly, has not been funded since its creation in the 1960s, and so how we move forward with that is something that I think is important, and we look forward to working with you and the Members of Congress on that issue.

The CHAIRMAN. Thank you. As you are no doubt aware, there have been many parallels between this disaster in the Gulf of Mexico and the disaster that struck in my congressional district just a couple of weeks before the Deepwater Horizon when we lost 29 brave coal miners in a coal mine tragedy.

There are those that say we should wait for the results of ongoing investigations before doing anything, before moving forward even though unsafe conditions are already well documented and continue to exist after the tragedies have occurred.

Do you believe that Congress should wait for the results of the ongoing investigations before trying to move forward on the type of legislation we are discussing today or is there a need to move forward now?

Secretary SALAZAR. There is a need to move forward and to move forward with urgency, Chairman Rahall, and, frankly, the sooner that action is taken, the action that we are taking, the action that we are asking the Congress to help us with, the faster it is that we are going to be able to get beyond the tragedy and start standing up again the OCS effort in a way that can be done in a safe manner and protective of the environment. So, in my view, waiting is not an option.

The CHAIRMAN. And let me ask you a further question about this pending legislation. When devising safety standards in legislation, do you think Congress should devise a more performance-based system or do we need to be more prescriptive? For instance, would it be a good idea for Congress to specify in law how many blind-shear rams should be on a blowout preventer?

Secretary SALAZAR. Let me say, Chairman Rahall, the organization which we created, I created through secretarial order that splits up the organization the way you described it earlier, was in fact an organization that we developed based on looking at Norway and looking at the United Kingdom as well. After tragedies they have had there with respect to OCS development, they came in and looked at how they were regulating the oil and gas development in the oceans, and so that was a manifestation of the organizational effort that we have created through secretarial order.

The standards that are to be used are something that Mike Bromwich will be developing and in part it will be the implementation of the safety recommendations, which the President directed be delivered to him on May 28, and those recommendations have been delivered to him.

On the question of what is mandatory versus what is performance-based, that is something that we will be working on in the days and weeks ahead. You know, I have a personal view on some of these issues but I have not yet had an opportunity to work with Mike on some of these issues, so maybe it would be a good idea for him to comment on that just briefly.

The CHAIRMAN. OK, but you see where I am going. I don't want to freeze in place today by prescriptive standards that forbids changes of the current technology is. We all know, whether it is open-heart surgery procedures or cancer surgery, you don't want to freeze in place what we have today knowing advances that are still likely to be made in the future.

Secretary SALAZAR. Let me respond.

The CHAIRMAN. We don't want to freeze in law.

Secretary SALAZAR. No, I agree with you totally on that, Chairman Rahall, and I think one of the things that is going to happen as a result of the Deepwater Horizon, looking at all of the different issues that occurred here in many days before the explosion on April 20, is that there will be a lot to be learned, and in fact today what is happening in the subsea at 5,000 feet is nothing short of the Apollo 12 project and trying to bring that home.

And so technology that will be developed is something that is very important, so I do think that there ought to be the flexibility to the Bureau of Ocean Energy, Enforcement, and Regulation to the Department of the Interior is to make sure that we are able to develop those standards in a form that takes advantage of the lessons learned.

The CHAIRMAN. Director Bromwich?

Mr. BROMWICH. I agree with that. I think the risk of being too prescriptive is that the prescription will be quickly overtaken by new technology. So it may be appropriate to establish certain baselines that are prescriptive, but I think, as the Secretary has just said, it is critical to allow enough flexibility and discretion for the agency to respond appropriately to developments in technology over time.

The CHAIRMAN. My time has expired.

Mr. HASTINGS. Thank you, Thank you, Mr. Chairman. I am going to yield my time to Mr. Cassidy, but Mr. Secretary, before I do, on two other matters unrelated to this hearing, the PIL payment issue and the monument issue. I will be sending you a letter today and we would like to have a full and complete response to those questions, so I just wanted to give you a head's up, that letter is going out today on an issue that we have had correspondence on in the past.

But with this I want to yield to my colleague from Louisiana whose state obviously is impacted, so Mr. Cassidy.

Mr. CASSIDY. Thank you, Mr. Hastings.

Mr. Secretary, in the Department of the Interior brief that was filed in Judge Feldman's court in New Orleans, DOI denies that there is irreparable economic harm because of this what we call back home jobs moratorium. Now, given that 20,000 jobs will be directly—20,000 will be laid off directly, and as many as 100,000 will be indirectly affected, those are fairly conservative estimates, is that not irreparable harm?

Secretary SALAZAR. Congressman Cassidy, I appreciate the question and the economic issues at stake, and we recognize that there are economic consequences to the moratorium that we imposed. We believe that the moratorium was correct when we put it into place, and we believe it continues to be correct because the dynamic situation we see unfolding in the Gulf today——

Mr. CASSIDY. Just because I have limited time, is that not irreparable harm, 20,000 jobs lost directly, maybe 100 more indirectly, is that not irreparable harm?

Secretary SALAZAR. I would say the greater irreparable harm would be if there was another blowout where there is not the oil response capability to even deal with the current Deepwater Horizon blowout, and the greater irreparable harm would be if you have a devastation of the Gulf Coast and its communities in a way that cannot be recovered, and so our program is——

Mr. CASSIDY. Thank you.

Secretary SALAZAR.—comprehensive moving forward.

Mr. CASSIDY. I just have limited time. I don't mean to be rude, I am very sorry.

So your collection of engineers from the National Academy of Engineering, they go through this, and they said that a blanket mora-

torium is not the answer. It will not measurably reduce risk further, and it will have a lasting impact on the nation's economy which may be greater than the oil spill.

Now, here are eight experts gathered by the Department to make a decision, and they feel as if—the experts, science, not whatever—that this is not highlighted. I could go through more. "A blanket moratorium will have the indirect effect of harming thousands of workers and further impact state and local economies suffering from the spill. We would, in effect, be punishing a large swath of people who were and are acting responsibly, and are providing a product that the Nation demands. A blanket moratorium does not address the specific causes of this tragedy. We do not believe punishing the innocent is the right thing to do. We encourage the Secretary of the Interior to overcome emotion with logic, and to define what he means," and they go on.

Now, these were the experts, these were the scientists, so to speak, of petroleum engineering. What do you know differently than what they recommend?

Secretary SALAZAR. First, Congressman Cassidy, their job was to help us with the safety report to the President, and they did, and I appreciate their help. I have met with the subsequent to that report, and will continue to get their input as well as the input from others on safety measures.

Second, the question of the moratorium was a policy call, which I made, and there are two fundamental questions that need to be answered. One, do we have the oil spill response capability? Number two, can we ensure ourselves that we can move forward without the possibility of creating this kind of disaster again? How can we minimize that?

Mr. CASSIDY. Now, I want to ask this because, again, in your report here you state that "Per the regulations, the advanced permit to drill requires technically detailed descriptions of well designed criteria, casing, cementing, and blowout protector systems." This is page 6 of your brief.

These fellows, they are all men so I will call them fellows, these fellows in their very first page say that, "We believe the blowout was caused by complex and highly improbable chain of human errors, coupled with several equipment failures and was preventable."

Now, they are not saying that this is something which is a black box which we peer into and cannot know an answer. Rather, they are saying that it is defined, and they produced this White Paper, which I am sure you are familiar with, which are safety recommendations that can be implemented now, and indeed per your brief filed with Judge Feldman you could look at those plans they have for drilling right now, and decide whether or not they meet the best practices outlined in this White Paper.

Again, why not do that and preserve these 20,000 jobs?

Secretary SALAZAR. OK. Let me answer the question in the broadest sense because I think members of the Committee and, Mr. Chairman, you and others have a great interest in where we are on the issue of the moratorium.

We had three choices in front of us, OK. The first is simply move forward and pretend that nothing had happened, and that another

incident like this could never happen again, and there were some who were advocates of that, OK?

We had another option, which some were advocates of, and that is that we bring to and end production in the oceans of America. OK, so that was a stop button. The President and I chose to move forward with a pause button because we believe that we have to learn some lessons to make sure that this does not happen again.

Now, as we move forward we will adjust accordingly based on information that we develop, based on our ability to ensure safety and environmental protection, and so that is part of the process which we are undergoing at this point in time.

Mr. CASSIDY. I yield back. You have been generous, Mr. Chairman.

The CHAIRMAN. The gentleman's time has expired. The Chair will recognize by the order in which they were here on the majority side, Mr. Heinrich from New Mexico.

Mr. HEINRICH. Thank you, Mr. Chairman, and welcome, Mr. Secretary. I have a few questions, mostly regarding onshore reform.

As you know, my home state, unfortunately, we are not blessed with the ocean-front property as some of my colleagues on this Committee, so I am going to focus largely on onshore.

What is the Department doing to address some of the challenges that we have seen in the southern part of your home state and the northern part of my home state the split estates issues? Oftentimes where the minerals are Federally held the surface is privately held, and there are a number of inherent challenges and conflicts that tend to pop up between those surface owners and the folks who lease the minerals underneath those areas.

Secretary SALAZAR. Congressman Heinrich, on your specific question on the split estates, I will have Director Bob Abbey get back to your office on what it is we are doing within BLM there. I will say this; that with respect to onshore issues and how they are addressed in this legislation, they are important issues for us, and we have moved forward on a reform effort that has included a number of different things, elimination of royalty-in-kind, which applies both to offshore as well as onshore, moving forward with the categorical exclusions issues within BLM and having the right kind of balance, in my view, in terms of how we protect the environment and conservation efforts, and at the same time allow development to occur.

My own sense on this legislation, because it does deal with both BLM and with what was formerly MMS, is that we have a crisis right now in our hands relating to the Outer Continental Shelf, but there are some additional reform efforts related to onshore oil and gas development that I would be very happy to work with all of you and seeing how we might be able to make improvements there as well.

Mr. HEINRICH. Thank you. You may have answered this when the Chairman started, but does the Administration have a position on full funding of the LWCF?

Secretary SALAZAR. The Administration's position on the Land and Water Conservation Fund is that they would like to see full funding of the Land and Water Conservation Fund. So if you look at the President's budget for this year and moving forward in the

years ahead, it does achieve what was the full funding level at $900 million.

I would say that this is the time for all of us to really re-examine what the commitment to conservation really is for the United States. I think when Stuart Udall, from your home state, Congressman Heinrich, and others sat down with Robert Kennedy and others, and thought about the concept of the Land and Water Conservation Fund their thoughts were that we took our American resources from our earth and that we should return something back to the earth with respect to some of the money needed for conservation.

In my own personal view, and this is just my personal view, that is a promise unfulfilled because, in fact, billions of dollars that should have gone into the Land and Water Conservation Fund have not gone there because they have been diverted into other areas.

Mr. HEINRICH. I appreciate that very much. I think it is an incredibly important part of this legislation.

I know you issued a secretarial order last year regarding renewables. What is the status of the Department's response to that order, and specifically, how are the fast-track projects moving along?

Secretary SALAZAR. I am proud to say that that is one of the reform efforts which Director Abbey and my team have been working on very hard, and Assistant Secretary Wilma Lewis. We are looking still forward to getting a December 1 target date of permitting approximately 5,000 megawatts of power, mostly in solar and wind and geothermal.

I have been in places like—very remote places in Utah, for example, where you have wind, solar, and geothermal projects combined that are actually up and running in Milford, Utah. So it is a very significant part of our new energy portfolio, and it is something that the President has prioritized. It is something we worked with you and the Congress to make it happen, and I do believe it is going to happen.

Mr. HEINRICH. Thank you. I yield back, Mr. Chairman.

The CHAIRMAN. The gentleman from Colorado, Mr. Lamborn.

Mr. LAMBORN. Thank you, Mr. Chairman.

Mr. Secretary, everyone here I believe and hope agrees that our priorities need to be to stop the leak, clean up the oil, address the needs of the Gulf states communities, and hold BP accountable. Now you have stated in the past that under your watch the Department will take very seriously the importance of science and peer-reviewed documents submitted by experts.

According to recent press reports and releases from the Department after the recent offshore safety report was peer reviewed, it was then edited by political operatives at either the Department or the White House to assert against the recommendations of the expert report signers that a six-month OCS moratorium was appropriate. The experts then came out and denounced this manipulation.

Two weeks ago before the Energy and Minerals Subcommittee I asked the acting Inspector General if she would open an investigation into how these changes were made, who made these changes,

and why those changes were misrepresented to the public as the work of the engineering professionals that the Department had contracted for the report. At the time she stated that while she wasn't prepared to immediately declare that they would open an investigation, she could do so in the future.

In order to ensure that she has the information she needs to make a comprehensive investigation, are you willing to cooperate with the Inspector General's investigation into the political manipulations of this report?

Secretary SALAZAR. Congressman Lamborn, first, there are no political manipulations. My letter to the President that I personally authored is very clear in its statement. It transmits the 30-day report to the President, and it separates my recommendation to the President, which is a policy matter relative to the moratorium. The fact is that the role of the engineers which I asked the National Academy of Sciences and the National Academy of Engineering, they were part of a peer-review process with respect to the safety issues, and I appreciate the work that they did very much. But at the end of the day the question of whether or not we move forward with drilling activity in the Outer Continental Shelf ultimately is the responsibility and duty under the law of the Secretary of the Interior. It is not the responsibility of the engineers or anyone else. And so that was my decision and I take full responsibility for that decision.

Mr. LAMBORN. Do you think it is appropriate to apologize to the American people for the wrongful interpretation that was put on the report?

Secretary SALAZAR. I don't think there is an apology that is necessary, Congressman Lamborn. The fact of the matter is I think that what this crisis should tell you, you being a Member of Congress from my home state, Doug, is that we ought not to let partisan politics or ideology essentially guide the issue which we face in America here today. We are in the midst of a dynamic crisis. It is an epidemic crisis.

Yes, like 9/11, yes, like other crises we have faced, but this continues. It is not just a one-day thing to hit us. We are in day 71. We are going to be in it for several more months, and this is the time for the United States to come together and say we have a problem and we are going to fix the problem, and I will tell you, Congressman Lamborn, as Secretary of the Interior, I am absolutely resolute and confident that the problem will be fixed, and that this Gulf oil spill will serve as a catalyst for safer and more environmentally protective production of oil and gas in the Outer Continental Shelf; that it will serve as a catalyst, sir, for moving forward with a Gulf Coast restoration plan of this landscape of national significance, and that this Gulf spill will also serve as a catalyst for a new conservation agenda, and to help us move into the new energy frontier.

So, I think if we as a country use the Gulf oil spill, this crisis, to really deal with these monumental issues of our time this crisis will be looked back 20 years from now in a very positive way by the American people.

Mr. LAMBORN. Mr. Secretary, I agree with you on what our goals and intentions are and need to be, and I agree that partisanship

should not be a part of that. I am troubled that the experts had to come out and denounce the statement that was made that they had called for a moratorium when they did no such thing. In fact, they said that it presents other competing safety problems by having just a blanket moratorium instead of a nuanced focus approach. I am just troubled that they had to come out and denounce that interpretation.

Secretary SALAZAR. Yes, they have their points of view and I appreciate and respect their points of view, and I appreciate the points of view of Members of Congress and other groups who have communicated with us. I have met with the engineers, including other engineers who are involved in that report, and I have had additional conversations with them about their point of view on how we move forward safely.

You know, many conversations have been held with people about whether or not there is a part of OCS oil and gas development that can be moved forward with appropriate demarcations. May Day demarcations with respect to shallow water production, and we are moving forward with that. There may be some other demarcations that are appropriate as well, but we are going to be thoughtful and we are going to do the right thing, and I am not going to be pushed into doing anything prematurely relative to additional development in the OCS.

Mr. LAMBORN. Thank you.

The CHAIRMAN. We have time for one more question before breaking for votes. The gentleman from Oklahoma, Mr. Boren is next, and I will leave it up to him to decide whether he would like to not yield his time but give way to the former Chairman of this Committee, Mr. Miller of California, to ask questions ahead of him.

Mr. BOREN. Mr. Chairman, I was number 27 the last time that the Secretary was here, but out of deference to my senior colleague, Mr. Miller, I will yield all of my time to him.

Mr. GALLEGLY. Mr. Chairman, parliamentary inquiry.

The CHAIRMAN. The gentleman from the State of California.

Mr. GALLEGLY. Mr. Chairman, was that a unanimous consent question?

[Laughter.]

Mr. MILLER. I thank the gentleman. Welcome, Mr. Secretary, and Director Bromwich to the Committee.

My question really is at what point do—how do we decide who is going to get to play? Assuming that at some point there will be a resumption of oil drilling on the Outer Continental Shelf, that there are leases that have been let and they will be exploited. What is the criteria for companies to now drill upon the American Outer Continental Shelf?

Obviously, I have a very serious, longstanding concern with British Petroleum. In my other committee, in the Education and Labor Committee, we have chronicled over many years, as has OSHA, dangerous, lethal behavior by them repeated time and again in their refineries, on the pipelines and elsewhere under their jurisdiction, and now we see many of the warnings that we received over the last decade by independent commissions, from former Secretary of State James Baker's independent commission to the pipeline safety, to Booz Allen, talking about cost cutting, about dan-

gerous decisions that were ignored all the way to the boardroom time and again.

I guess the question I have is I want to know are they going to be allowed to go back out onto what is a very dangerous place as we now see for the environment, a critical area to explore for oil, are they going to be allowed to go out there or into the Arctic? I am sure they have the technical capabilities to do it. That is not what I am concerned about.

What I am concerned about is the ethics of this company and how they have performed in the past to measure their performance in the future. I think they should be debarred from participating in the Outer Continental Shelf for five or seven years. It will have little or no impact on the supply of fossil fuels to this country. This is one of the most competitive places, one of the prizes to drill in the world, and with possibly some of the greatest returns to them. But at some point the American people are entitled to a standard. They have killed their workers before. They have refused to comply. They have paid some of the largest fines in history. I see that you just assessed them an additional fine for false, inaccurate, and misleading reports, which I assume is they misled the American public what they owed them on those lands, and I just want to know how the Department is going to handle this or how you think the Congress should handle this.

Sort of like a poker game, you have to have jacks or better to open. You ought to bring a safety record. You ought to bring a conscientious corporate policy to the Outer Continental Shelf at a minimum. The question is whether or not the continental shelf will be available or not in the future is a different decision, but which parties are going to get to play and what are the standards that are going to be imposed?

Secretary SALAZAR. Congressman Miller, first let me say that the standards and enforcement are absolutely necessary for moving forward with OCS development, and that is something that I have asked Mike Bromwich to work on with me and with others, and obviously the 30-day report to the President on safety will be part of that.

Second, the question of past performance of companies, it is something that I will work with Mike Bromwich to figure out what it is that makes the most sense here, and I would ask Mike perhaps to comment on that particular point, and how you take into account the past performance of companies relative to whatever bar you might want to put into place. So Director Bromwich.

Mr. BROMWICH. Yes. There are new standards that have been created industrywide that have been issued in the last several weeks, one on safety and one on the environment. So they are already across the board new requirements and new enhancements.

But you raise a very important question, and that is, with a record of bad performance, deadly performance, should you evaluate applications differently. It is something that I am eight days into the job that I don't have a firm conclusion on yet, but certainly it should be considered a relevant factor. It is also going to be a relevant factor as to what kind of enforcement will be brought with respect to violations in the future. It is perfectly appropriate, in my

view, that if you have repeat offenders, if you have recidivists that should increase the enforcement penalties that are imposed.

Mr. MILLER. Well, I appreciate you saying that, and I hope that you will continue that, and it is up to the Congress to make that clear. But in the coal mining industry, in Mr. Rahall's district, we have—under MSHA we have patterns of violations, and we see companies with horrible records that have been able to evade the law and continue to put miners in dangerous and deadly situation.

I say this about BP because when I look at how they run complex refineries, and the lives that they have put in jeopardy, and the lives that have been taken, this is a complex workplace, and I am a little concerned that on the questions of process management standards that you are now starting to put into effect, or you have out for comment, that those were created by the American Petroleum Institute and no discussion with OSHA has taken place prior to very recently about those standards, and OSHA has 40 years of experience working with these industries on those issues, and I would hope that those would not go to final until there is an opportunity to walk this across that experience on how those processes, they may be the most important indicator of preventing serious explosive events taking place in the chemical and oil industry.

Mr. BROMWICH. Mr. Miller, on that point, in connection with the joint investigation that is being conducted by my agency and by the Coast Guard, the expertise of OSHA is specifically being sought, so we are aware of the relevance of their work to the work that we are doing now, and I think that that—I don't know whether that is a new recognition or not, but it is a recognition that we now have and plan to pursue in the future.

Mr. MILLER. Well, Mr. Rahall and I both sent you a letter asking you to hold for a moment before those regulations that were developed by the Petroleum Institute, which may have very many good suggestions, but that should not be the sole determinant of what is going forward.

Thank you. I yield my time back to Mr. Boren.

The CHAIRMAN. No, Mr. Boren still has his——

[Laughter.]

The CHAIRMAN. Mr. Boren still has his full time when we come back after this series of votes on the Floor.

The Committee is in recess until the votes are over.

[Recess.]

The CHAIRMAN. The Committee on Natural Resources will resume its sitting, and on the Minority side the next gentleman in order of recognition is Mr. Wittman.

Mr. WITTMAN. Thank you, Mr. Chairman. I appreciate the opportunity. Secretary Salazar, thank you so much for your efforts.

I did want to talk a little bit about the current process of lease sales. I know that we have halted, or your office has halted, Virginia's proposed OCS lease, which is going to further delay, I think, some efforts there as far as looking at comprehensive energy, and I appreciate the pause. I know we have to stop and figure out what went wrong in the Gulf and make sure that we are putting those practices in place as far as future efforts for offshore energy development.

I do believe strongly, though, that we need an all-of-the-above energy policy. We need to make sure we are developing all of our sources of energy, making sure that the marketplace allows those to be lifted up as to which ones are the most efficient, and I support oil and gas development as part of that whole mix. I also support wind development.

I know the Administration had high hopes of developing offshore wind projects, and I appreciate your efforts to coordinate the Mid-Atlantic states and study the issue. However, 17 months into this Administration, MMS has only signed one commercial wind lease, held no lease sales and there don't seem to be any schedule, and on top of that the permitting process looks like it will take years.

I know as we have talked to folks it is an extended process with a variety of EIS's involved, and I know the agency has said, well, we are going to take that time because we are not exactly sure how to go about this, we haven't done these before. So I am concerned that it is going to take a significant period of time before any turbines can be built, and Virginia, as you know, has significant wind resources, has significant interests there. We have a number of consortiums that are very interested in offshore wind development.

My question is this, if the Administration is going to slow oil and gas development, what can we expect to see with offshore wind? Are we also going to go through the same slow methodical process with that, especially when we are looking at making sure we stand up all these energy sources?

Secretary SALAZAR. Thank you, Congressman, and thank you to you for your service on the Migratory Bird Commission and your great work there with Congressman Dingell on the conservation agenda for the country.

With respect to the question on the offshore wind in the Atlantic, let me just say that we are moving forward as quickly as we possibly can, and I do have a SWAT team that I have assembled within Interior to take a look at how we can expedite the effort. We have been working with all the states and opened up an office now in your State, in Virginia, which will be the Atlantic Wind Renewable Energy Office, and so this is a high priority, and we will make sure that on this one we will not fall behind the rest of the world in developing offshore wind.

Mr. WITTMAN. I think that is critical with our energy portfolio. Let me ask a little bit more, too, about the offshore oil and gas development. I know right now lease 220 site, the lease process there has been canceled. I am hopeful that as we learn the processes and the problems that have occurred in the development in the Gulf that we apply those, especially there in Virginia, because I know there is interest in making sure that that lease process goes forward.

Can you give us some idea about where you see the future for the oil and gas lease off of Virginia as far as timewise? I know, as I said, right now it is canceled. Do you see that process being picked back up after we go through the analysis and learning process here in the Gulf?

Secretary SALAZAR. Congressman, first, let me say that President Obama and I have been clear that we see an energy portfolio that, yes, very much pushes the new energy frontier for America, but at

the same time we recognize that oil and gas is a part of our energy portfolio to date. And so we will see efforts to continue to develop oil and gas in the Outer Continental Shelf, and we will learn the lessons from the Deepwater Horizon to make sure that as it is developed it can be done in a safe way and a way that protects the environment.

With respect to Virginia, I would say this. Lease Sale 220 itself still had to undergo additional analysis, including additional environmental analysis, and there are important conflicts that you, Congressman Wittman, and the Governor and others need to be aware of relative to the Department of Defense and issues relating to that, that would also come out in that process. So we look forward to working with you, and the congressional delegation of Virginia and others as we move forward.

Mr. WITTMAN. Very good, and one last question. In your testimony you said that we were going to do everything in our power to make our effective communities whole. As you know, in the Gulf, obviously, the seafood industry has been affected as well as the offshore oil and gas industry. As you know, that effect transcends the borders of the Gulf states. It also affects places like Virginia, Virginia seafood processors.

Sixty-five percent of the oysters processed in Virginia come from the Gulf, so that effect extends beyond the Gulf states' boundaries, and I just wanted to make sure that you are doing everything through your agencies to make sure that we are focusing on just not making folks whole in the communities in the Gulf, but also how it affects seafood communities in states like Virginia, and I know other East Coast states are also closely tied to the Gulf seafood industry, so I just wanted to make sure you were aware of that, and that we have assurances that those things are going to be kept in mind as far as making sure that we are making our affected communities whole.

Secretary SALAZAR. Thank you, Congressman Wittman. The President and our team put together essentially a $20 billion escrow account, which is a place where claims can be filed through an independent administrator. There is an effort underway to make sure that legitimate claims are being paid, and so it will all be part of that process where claims that are legitimate claims will be considered.

The CHAIRMAN. The Chair recognizes the gentleman from Oklahoma, and promises him the Chair will not take out of his time the minute and 43 seconds that Chairman Miller went overtime.

Mr. BOREN. Thank you, Mr. Chairman. Thank you so much for holding this hearing and for allowing me to ask a question. I also want to thank our panelists for being here today, and also just want to say a special thank you. I know that you are all living with this spill every day. I can't imagine the amount of stress you are under; you know, all the hours that you are putting into this. You know, we may disagree sometimes on different points of policy, but I know that your heart is in the right place and you are working really hard to try and get this thing cleaned up as soon as possible and to get this leak stopped. So I do want to say thank you.

To the Secretary, I also want to say thank you. Sometimes we disagreed on energy policy at different points along the way, but

in Indian country I think we have worked really well together, particularly helping out my district in Oklahoma. I think you all are doing a tremendous job on the MMS reports, to the ethics reforms, some of the things that you all are doing.

Some of the concerns I have, particularly in relation to the offshore, we do have some Oklahoma companies that have investments in the offshore. You know, they are not BP, they are not Exxon. I mean, these are smaller companies that have some investments, and the moratorium is affecting them.

As an example, Samson, which is based in Tulsa, Oklahoma, because of the moratorium it is costing them hundreds of thousands of dollars a day, and I have visited with some of the executives. Some of them feel actually that it is unsafe to have these rigs and everything out there without a clear program and just kind of sitting out there for six months.

So as you make your determination, as you take some of these recommendations like Mr. Cassidy pointed out, I hope you will also take into account the loss of jobs that is going on.

Now to the onshore I have some information from IPAMS. This is interesting. They sent us this paper. It says, "A natural gas and oil lease is a definite maybe. Maybe the lease will be issued within a reasonable time period after the sale. Maybe you will get through all the environmental analyses and regulatory hurtles. Maybe you will get permission to drill. Maybe your project won't be held up by legal challenges from obstructionist groups, and maybe you will find oil and gas, but definitely you will have to pay potentially millions of dollars. The natural gas and oil industry pays billions of dollars into the U.S. Treasury to obtain leases, $10 billion in 2008. Each lease is an at-risk investment with no guarantee that energy resources will be found or that it will return any revenue to the leaseholders."

BLM right now is currently holding about $100 million worth of unissued and suspended leases in Utah, Wyoming and Montana, and Colorado. That is $100 million of the company's capital that is being held by the Federal Government in a nonproductive capacity. And the draft language of the bill, of the CLEAR Act, as an example, and I would like you to touch on this, there is a provision that eliminates non-competitive leasing, and so let us say you have a lease and only one company bids on the project, and you know, this is in an area where you are not having lots of companies bid on it because the geology is not proved up, because there may not—this may be what is called a rank wildcat in oil country, but some company decides, hey, we are going to put it on the line. We are going to drill up this lease and pay for it, and here are some of the wildcat developments that have happened recently: The Pinedale Andy Cline in Wyoming; the Bock & Shale Play in North Dakota, and Marcellus Shale in Appalachia. These are huge finds that would not have happened without some of this, you know, wildcat mentality, and I think under the draft of 3534 I am worried about this non-competitive lease piece.

So as my time expires anything that you can touch on on the—you know, hopefully in the six months on the offshore maybe something can be worked out in that timeframe to start it back up, and the second, the onshore, like the non-competitive leasing and mak-

ing it harder for these companies to prove up their assets, I would like your thoughts on that.

Again, thank you for your efforts, and I do appreciate John being in my class. He gets gold stars for being your brother.

Secretary SALAZAR. Thank you very much, Congressman Boren. I appreciate the comments on the other work that we do because this Department is a huge department, and we continue to work hard on the issues relating to First Americans, including in your state Cobell and so many other issues that are very important to the Department and your country, and so I am proud of the team that we that we can use to work on that broad agenda.

With respect to the two questions that you ended your comments with, let me take the six-month moratorium first. We are working on that to see whether there are some adjustments and some additional demarcations that might be able to be made. We will have more on that in the days ahead, and we are cognizant of all the important factors here, including protection of workers, and the safety issues, protection of the environment, as well as the economic issues relating to the moratorium, so there are all very much on our minds.

Third, with respect to the issue concerning the CLEAR Act, and the elimination of non-competitive leases, let me say there has been significant reforms that we have undertaken within the Bureau of Land Management, and in fact part of the reason that those reforms are necessary are to be responsive to that IPAMS sense that you always get a definite maybe. Frankly, in the last administration, leases were handed out like pieces of paper without doing the kind of proactive planning that is necessary.

Director Bob Abbey and I have taken a different approach, and that is that when leases are issued we want to have for certainty that those leases are in fact going to be developed. Now if you get a lease, more than likely it is going to be subject to a protest because of the way that the system has been set up over time. We are changing those things and it may be appropriately, Congressman Boren, at anytime for you to come and have a conversation with Director Abbey and what we are doing in terms of those reforms at the BLM.

And perhaps, Mr. Chairman, at some point, I know you have a very busy schedule here, but we would welcome the opportunity to provide information the BLM and what it is doing on the onshore relative to this particular issue and others.

The CHAIRMAN. Yes. Most definitely, Mr. Secretary. Thank you.

Mr. BOREN. Thank you, Mr. Chairman.

The CHAIRMAN. The gentleman's time has expired. The Chair will advise all Members that the Secretary does have to leave at 12:10. Dr. Bromwich will remain with us but, as always the practice, Members can submit questions for the record, and I am sure the Secretary or Direct Bromwich will get back to the respective Members.

Secretary SALAZAR. Thank you, Mr. Chairman.

The CHAIRMAN. The Chair recognizes the gentleman from Georgia, Dr. Broun.

Dr. BROUN. Thank you, Mr. Chairman, Mr. Secretary.

I want to go back to a question very briefly that Mr. Lamborn was giving you, and I don't think we got an answer. Just yes or no, will you cooperate with IG on this investigation about the disparity between your report and what the engineers said in theirs?

Secretary SALAZAR. Congressman Broun, we have nothing to hide and I am willing to cooperate with anybody. I am not aware of——

Dr. BROUN. Is that a yes?

Secretary SALAZAR. The answer is yes, we will—cooperate with anybody.

Dr. BROUN. Thank you so much. I appreciate it.

Secretary SALAZAR.—cooperate with anybody.

Dr. BROUN. Just in the sake of time I apologize for cutting you off.

I couldn't agree more with President Clinton's assessment last week that our priorities must be to fix the leak, keep the oil away from the shore, minimize the damage of the oil that reaches the shore, and find out who did what wrong and hold them accountable. But we do need to do the first three first, and let us never forget that the victims who must be made whole from this tragedy, and we cannot legislate, in my opinion, until we accomplish these priorities and discover what went wrong in the first place.

Now is one time when this Administration might want to put politics aside and let a serious crisis actually go to waste.

I would like to bring to the attention of this Committee two letters that I sent to the Administration last week, Mr. Chairman, in my capacity as Ranking Member of the House Committee on Science and Technology, Subcommittee on Investigations and Oversight, outlining a troubling pattern of politically motivated actions from this Administration in dealing with the Gulf oil spill and demanding scientific integrity moving forward. Mr. Chairman, I would like to as unanimous consent that the two letters I have sent to the President and to Secretary Salazar be entered into the record.

The CHAIRMAN. Without objection, so ordered.

[The letter to The President submitted for the record by The Honorable Paul C. Broun, M.D., Ranking Member, Subcommittee on Investigations and Oversight, follows:]

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON SCIENCE AND TECHNOLOGY
SUITE 2321 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON. DC 20515–6301
(202) 225–6375
http://science.house.gov

June 24, 2010

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

The national tragedy unfolding in the Gulf of Mexico is impacting the lives of millions in the Gulf Region and has attracted the attention of the entire nation. In the months following the Deepwater Horizon accident, BP, as well as federal, state, and local authorities, have sought to halt the flow of the ruptured wellhead, contain leaking oil and natural gas, prevent oil from reaching nearby shores and wetlands, and mitigate the effects of the spill on the Gulfs ecosystem. These are clearly

daunting tasks. Despite the complexity involved, it is the responsibility of BP, along with federal, state, and local governments to meet these challenges. In order to surmount this hurdle, all parties need to know they are receiving the best scientific and technical advice possible—guidance free from political meddling or special interest motivations. Because I feel so strongly that the investigation, amelioration, and remediation of the Deepwater Horizon incident should be guided by unfettered scientific and technical advice, I am deeply concerned with a number of instances that have come to light in the wake of this accident.

The Science and Technology Committee is no stranger to Commissions tasked with investigating complex technical incidents. That is why I was confused when your Administration announced the membership of the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling.[1] Previous Commissions established to investigate accidents such as the *Challenger* and *Columbia* Shuttle accidents all benefited from vast and broad technical expertise.[2] Unfortunately, I believe the Commission, and ultimately the American people, would benefit from representation by more technical and scientific members who have not already come to conclusions before being presented with all the facts.[3] Press reports have already cited comments from Commission members detailing their conclusions and hinting at what their findings and conclusions will be—before ever being presented with details and facts relating to the incident.[4]

The conclusions, findings, and recommendations presented by previous commissions were readily accepted and routinely implemented because Congress and the American people trusted that the work conducted by those Commissions was unbiased. I fear that as currently constructed, the Commission will serve little purpose other than rubberstamping your Administration's predetermined policy goals without fully investigating the root causes of the incident. Based on the composition of the Commission/it appears that the real task they are being asked to undertake is to justify the offshore drilling moratorium.

Therefore, I recommend that, to ensure its complete independence, the Commission should report directly to you and to the Congress. Additionally, 1 would suggest that the membership of the Commission be expanded to include more scientific and technical members in a manner similar to that of the *Challenger* and *Columbia* Commissions, and that you solicit suggestions for new members from key Members of Congress.

I look forward to working with you to ensure that the American public will view the work of the Commission as wholly independent and unbiased.

Sincerely,

REP. PAUL BROUN, M.D.
Ranking Member
Subcommittee on Investigations And Oversight

cc: REP. BRAD MILLER
Chairman
Subcommittee on Investigations & Oversight

[The letter to Secretary of the Interior Ken Salazar submitted for the record by The Honorable Paul C. Broun, M.D., Ranking Member, Subcommittee on Investigations and Oversight, follows:]

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[1] White House Press Release, Subject: President Obama Announces Members of the BP Deepwater Horizon Oil Spill and Offshore Drilling Commission, June 14, 2010.

[2] "Investigation of the Challenger Accident", Hearing before the Committee on Science and Technology, House of Representatives, June 10, 1986 "Space Shuttle Columbia", Joint Hearing before the Committee on Science and Technology, U.S. House of Representatives, and Committee on Commerce, Science and Transportation, U.S. Senate, February 12, 2003.

[3] John Broder, "Panel Unlikely to End Deepwater Drilling Ban Early," *New York Times,* June 21, 2010.

[4] Seth Borenstein, "Obama Spill Panel Big on Policy, Not Engineering," *Associated Press,* June 20, 2010.

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June 24, 2010

The Honorable Kenneth Salazar
Secretary
Department of the Interior
1849 C Street NW
Washington, DC 20240

Dear Secretary Salazar:

The national tragedy unfolding in the Gulf of Mexico is impacting the lives of millions in the Gulf Region and has attracted the attention of the entire nation. In the months following the Deepwater Horizon accident, BP, as well as federal, state, and local authorities, have sought to halt the flow of the ruptured wellhead, contain leaking oil and natural gas, prevent oil from reaching nearby shores and wetlands, and mitigate the effects of the spill on the Gulf's ecosystem. These are clearly daunting tasks. Despite the ' complexity involved, it is the responsibility of BP, along with federal, state, and local governments to meet these challenges. In order to surmount this hurdle, all parties need to know they are receiving the best scientific and technical advice possible—guidance free from political meddling or special interest motivations. Because I feel so strongly that the investigation, amelioration, and remediation of the Deepwater Horizon incident should be guided by unfettered scientific and technical advice, I am deeply concerned with a number of instances that have come to light in the wake of this accident.

On May 27,2010, you issued a report titled "Increased Safety Measures for Energy Development on the Outer Continental Shelf." The report stated that, "The recommendations contained in this report have been peer-reviewed by seven experts identified by the National Academy of Engineering." The Academy selected these individuals because of their extensive petroleum industry expertise and independent perspective. Unfortunately, the expert opinions of those individuals appear to have been manipulated to advance the Administration's policy goal of preventing domestic oil production. In a letter to Governor Jindal, and Senators Landrieu and Vitter, six of the eight peer-reviewers chastised the Administration's manipulation of their expert advice.

! In their letter they stated:

> *"the scope of the moratorium on drilling which is in the executive summary differs in important ways from the recommendation in the draft which we reviewed. We believe the report does not justify the moratorium as written and that the moratorium as changed will not contribute measurably to increased safety and will have immediate and long term economic effects. Indeed an argument can be made that the changes made in the wording are counterproductive to long term safety.*
>
> *The Secretary should be free to recommend whatever he thinks is correct, but he should not be free to use our names to justify his political decisions.*[1]

On March 9, 2009 the President issued an executive memorandum on scientific integrity tasking the Director of the Office of Science and Technology Policy (OSTP) to develop recommendations within 120 days to guarantee scientific integrity throughout the executive branch.[2] I've sought updates on the status of these recommendations for almost a year now.[3] They are still outstanding. Despite this delay, his memorandum did lay out the following principle:

> *"Political officials should not suppress or alter scientific or technological findings and conclusions...*
>
> *(c) When scientific or technological information is considered in policy decisions, the information should be subject to well-established scientific processes, including peer review where appropriate, and each agency should appropriately and accurately reflect that information in complying with and applying relevant statutory standards;"*[4]

In March of 2006, the previous Administration issued guidance to agencies to encourage

"the free exchange of ideas, data and information as part of scientific and technical inquiry. Scientific and technical information from or about Agency programs and projects will be accurate and unfiltered." (emphasis added)[5]

In August of 2007, the previous Administration issued a memorandum to agencies that said,

"[a]gencies are expected to conduct programs in accordance with the highest standards of ethical and scientific integrity."[6]

We expect our government to provide both Congress and the public the full results of their work without the filter that those with opposing views might like to impose. Otherwise, we cannot have a full and free scientific debate. While the Department of Interior report may not have directly altered the scientific and technical advice of those peer-reviewers, by implying that they agreed with the findings contained in the report, it appears that the Department of Interior clearly violated not only the spirit, but also the letter of several of the principles previously noted.

The Department of Interior's deceptive misrepresentation of peer-review in order to justify an offshore drilling moratorium presents a troublesome view of how this Administration views the role of science and technology relating to the Deepwater Horizon oil spill and the continuing response. As U.S. District Judge Martin Feldman recently wrote.

"Much to the government's discomfort and the Court's uneasiness, the Summary [of the Department of the Interior Report] also states that The recommendations contained in the report have been peer reviewed by seven experts identified by the National Academy of Engineering.' As the plaintiffs, and the experts themselves:, pointedly observe, this statement was misleading. The experts charge it was a 'misrepresentation.' It was factually incorrect."[7]

Therefore, by this letter, I request that the Department of Interior provide to the Committee all records, as defined in the attachment, relating to the Department of the Interior's report titled "Increased Safety Measures for Energy Development on the Outer Continental Shelf." This should include all drafts of the report and records of changes that were made. These documents should be delivered to room 394 Ford House Office Building by 5 p.m. on Friday July 2,2010. If you have any questions or need additional information, please contact Mr. Tom Hammond, Investigations and Oversight Subcommittee Minority Staff, at (202) 225–6371.

Sincerely,

REP. PAUL BROUN, M.D.
Ranking Member
Subcommittee on Investigations And Oversight

cc: REP. BRAD MILLER, Chairman, Subcommittee on Investigations & Oversight

cc: THE HONORABLE JOHN HOLDREN, Director, Office of Science and Technology Policy, Executive Office of the President

enc

[1] Letter from Kenneth E. Arnold, PE, NAE to Gov. Jindal, Senator Landrieu, and Senator Vitter, undated (attached).

[2] White House Memorandum, Subject: Scientific Integrity, March 9,2009.

[3] Letter from Rep. Paul Broun to Director Holden, July 14,2010. Letter from Rep. Paul Broun to Director Holden, October 2,2010. Letter from Rep. Paul Broun to Director Holden, December 1,2010.

[4] White House Memorandum, Subject: Scientific Integrity, March 9, 2009.

[5] NASA Policy on "The Release of Information to News and Information Media," pp. 1–2.

[6] White House Memorandum, Subject: FY 2009 Administration Research and Development Budget Priorities August 14,2007.

[7] Hombeck Offshore Services, LLC Et Al. V. Kenneth Lee "Ken" Salazar Et Al., No. 10 Civ. 1663 (E.D.L.A. June 22, 2010).

ATTACHMENT

1. The term "records" is to be construed in the broadest sense and shall mean any written or graphic material, however produced or reproduced, of any kind or description, consisting of the original and any non-identical copy (whether different from the original because of notes made on or attached to such, copy or otherwise) and drafts and both sides thereof, whether printed or recorded electronically or magnetically or stored in any type of data bank, including, but not limited to, the following: correspondence, memoranda, records, summaries of personal conversations or interviews, minutes or records of meetings or con-

ferences, opinions or reports of consultants, projections, statistical statements, drafts, contracts, agreements, purchase orders, invoices, confirmations, telegraphs, telexes, agendas, books, notes, pamphlets, periodicals, reports, studies, evaluations, opinions, logs, diaries, desk calendars, appointment books, tape recordings, video recordings, e-mails, voice mails, computer tapes, or other computer stored matter, magnetic tapes, microfilm, microfiche, punch cards, all. other records kept by electronic, photographic, or mechanical means, charts, photographs, notebooks, drawings, plans, inter-office communications, intra-office and intra-departmental communications, transcripts, checks and canceled checks, bank statements, ledgers, books, records or statements of accounts, and papers and things similar to any of the foregoing, however denominated.

2. The terms "relating," "relate," or "regarding" as to any given subject means anything that constitutes, contains, embodies, identifies, deals with, or is in any manner whatsoever pertinent to that subject, including but not *limit*ed to records concerning the preparation of other records.

Fax to: Gov. Jindal: 225–342–7099
Senator Landrieu: 202–224–9735
Senator Vitter: 202–228–5061

From: Kenneth E. Arnold, PE, NAE
3031 Shadowdale
Houston Texas 77043
832–212–0160

cc. Dr. Robert Bea, Department of Civil and Environmental Engineering, University of California at Berkeley

Dr. Benton Baugh, President, Radoil, Inc. Ford Brett, Managing Director, Petroskills

Dr. Martin Chenevert, Senior Lecturer and Director of Drilling Research Program, Department of Petroleum and Geophysical Engineering, University of Texas

Dr. Hans Juvkam-Wold, Professor Emeritus, Petroleum Engineering, Texas A&M University

Dr. E.G. (Skip) Ward, Associate Director, Offshore Technology Research Center, Texas A&M University

Thomas E. Williams, The Environmentally Friendly Drilling Project

A group of those named in the Secretary of Interior's Report, "INCREASED SAFETY MEASURES FOR ENERGY DEVELOPMENT ON THE OUTER CONTINENTAL SHELF" dated May 27, 2010 are concerned that our names are connected with the moratorium as proposed in the executive summary of that report. There is an implication that we have somehow agreed to or "peer reviewed" the main recommendation of that report. This is not the case.

As outlined in the attached document, we believe the report itself is very well done and includes some important recommendations which we support. However, the scope of the moratorium on drilling which is in the executive summary differs in important ways from the recommendation in the draft which we reviewed. We believe the report does not justify the moratorium as written and that the moratorium as changed will not contribute measurably to increased safety and will have immediate and long term economic effects. Indeed an argument can be made that the changes made in the wording are counterproductive to long term safety.

The Secretary should be free to recommend whatever he thinks is correct, but he should not be free to use our names to justify his political decisions.

The Primary Recommendation in the May 27, 2010 report, "INCREASED SAFETY MEASURES FOR ENERGY DEVELOPMENT ON THE OUTER CONTINENTAL SHELF" Given by Secretary Salazar to The President Misrepresents our Position

The National Academy of Engineering recommended us as contributors and reviewers of the recent Department of Interior "30 Day Review" of the BP Oil Spill. We were chosen because of our extensive petroleum industry expertise, and independent perspectives. The report states:

"The recommendations contained in this report have been peer-reviewed by seven experts identified by the National Academy of Engineering. Those experts, who volunteered their time and expertise, are identified in Appendix 1. The Department also consulted with a wide range of experts from government, academia and industry."

The BP Macondo blow out was a tragedy for eleven families, and an environmental disaster of worldwide scale. We believe the blowout was caused by a complex and highly improbable chain of human errors coupled with several equipment failures and was preventable. The petroleum industry will learn from this; it can and will do better. We should not be satisfied until there are no deaths and no environmental impacts offshore—ever. However, we must understand that as with any human endeavor there will always be risks.

We broadly agree with the detailed recommendations in the report and compliment the Department of Interior for its efforts. However, we do not agree with the six month blanket moratorium on floating drilling. A moratorium was added after the final review and was never agreed to by the contributors. The draft which we reviewed stated:

"Along with the specific recommendations outlined in the body of the report, Secretary Salazar recommends a 6-month moratorium on permits for new exploratory wells with a depth of 1,000 feet or greater. This will allow time for implementation of the measures outlined in this, report, and the consideration of information and recommendations from the Presidential Commission as well as other investigations into the accident.

"In addition, Secretary Salazar recommends a temporary pause in all current drilling operations for a sufficient length of time to perform additional blowout preventer function and pressure testing and well barrier testing for the existing 33 permitted exploratory wells currently operating in deepwater in the Gulf of Mexico. These immediate testing requirements are described in Appendix 1."

We agree that the report and the history it describes agrees with this conclusion. Unfortunately after the review the conclusion was modified to read:

"The Secretary also recommends temporarily halting certain permitting and drilling activities. First, the Secretary recommends a six-month moratorium on permits for new wells being drilled using, floating rigs. The moratorium would allow for implementation of the measures proposed in this report and for consideration of the findings from ongoing investigations, including the bipartisan National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling.

"The Secretary further recommends an immediate halt to drilling operations on the 33 permitted wells, not including the relief wells currently being drilled by BP, that are currently being drilled using floating rigs in the Gulf of Mexico. Drilling operations should cease as soon as safely practicable for a 6-month, period."

We believe the moratorium as defined in the draft report addresses the issues evident in this case. We understand the need to undertake the limited moratorium and actions described in the draft report to assure the public that something tangible is being done. A blanket moratorium is not the answer. It will not measurably reduce risk further and it will have a lasting impact on the nation's economy which may be greater than that of the oil spill.

The report highlights the safety record of the industry in drilling over 50,000 wells on the U.S. Outer Continental Shelf of which more than 2000 were in over 1000 feet of water and 700 were in greater than 5000 feet of water. We have been using subsea blowout preventers since the mid-1960s. The only other major pollution event from offshore drilling was 41 years ago. This was from a shallow water platform in Santa Barbara Channel drilled with a BOP on the surface of the platform.

The safety of offshore workers is much better than that of the average worker in the US, and the amount of oil spilled is significantly less than that of commercial shipping or petroleum tankers. The U.S. offshore industry is vital to our energy needs. It provides 30% of our oil production, is the second largest source of revenue to the U.S. Government ($6 Billion per year), and has a direct employment of 150,000 individuals. The report outlines several steps that can be taken immediately to further decrease risk as well as other steps that should be studied to determine if they can be implemented in a way that would decrease risk even more.

This tragedy had very specific causes. A blanket moratorium will have the indirect effect of harming thousands of workers and further impact state and local economies suffering from the spill. We would in effect be punishing a large swath of people who were and are acting responsibly and are providing a product the nation demands.

A blanket moratorium does not address the specific causes of this tragedy. We do not believe punishing the innocent is the right thing to do. We encourage the Secretary of the Interior to overcome emotion with logic and to define what he means by a "blanket moratorium" in such a way as to be consistent with the body of the report and the interests of the nation.

The foregoing represents our views as individuals and does not represent the views of the National Academy of Engineering or the National Research Council or any of its committees.

Kenneth E. Arnold, PE, NAE

Dr. Robert Bea, Department of Civil and Environmental Engineering, University of California at Berkeley

Dr. Benton Baugh, President, Radoil, Inc. Ford Brett, Managing Director, Petroskills

Dr. Martin Chenevert, Senior Lecturer and Director of Drilling Research Program, Department of Petroleum and Geophysical Engineering, University of Texas

Dr. Hans Juvkam-Wold, Professor Emeritus, Petroleum Engineering, Texas A&M University

Dr. E.G. (Skip).Ward, Associate Director, Offshore Technology Research Center, Texas A&M University

Thomas E. Williams, the Environmentally Friendly Drilling Project

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Dr. BROUN. Thank you. In my letter to the President, I asked that additional Members with broad technical expertise be added to the newly created National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling. Currently only two scientists or engineers sit on that commission. I also requested that the commission report to Congress, not just to the White House. Before pursuing legislative fixes, it might make more sense to wait until this commission and other investigations taking place finish their work.

In my second letter, which I sent to you, Mr. Secretary, I discuss the Department of the Interior's recently produced report titled "Decreased Safety Measures for Energy Development on Outer Continental Shelf." As you are aware, the findings of this report were used to justify an offshore drilling moratorium in the Gulf. However, shortly after the report was released we discovered that the Administration had manipulated the findings of six of the eight peer reviewers from the National Academy of Engineering.

The misrepresentation of the peer reviewers' recommendations, in order to justify an offshore drilling moratorium, presents troublesome patterns of how this Administration views the role of science and technology relating to this disaster. This is not the first time that this Administration's scientific integrity has been questioned.

In addition, it appears that these politically motivated actions have become a bad habit with how the Administration has dealt with the Gulf oil spill. The Administration's misdirected focus during this crisis reeks of political opportunism.

Mr. Secretary, the letter I sent you outlines previously defined principles of scientific integrity, and raise many of the concerns I just mentioned. Can you please share with me the methods used to produce this report?

Secretary SALAZAR. Congressman Broun, I would be happy to respond to those questions, and let me say a few points first.

In terms of timing relative to legislative action and the ongoing crisis on the Gulf Coast, we can walk and chew gum at the same time. We can deal with containing the spill and killing the swell and protecting the great assets of the Gulf Coast, but we can also move forward with ideas like some of the idea that Chairman

Rahall and others have championed in this Committee in terms of a reform agenda.

In September 19, I believe, of last year when I appeared before this Committee, and one of the subjects that was dealt with at that point in time was an organic act or what was then known as the MMS. So these are issues that have been in the hopper for a long time, and they are issues which I believe can be dealt with and should be dealt with now.

I also believe that the sooner we deal with these issues in terms of a legislative framework and providing the resources that are needed to be able to do the enforcement and the inspections required will allow us to get to what many of you want to get to sooner, and that is to have an OCS program that can move forward safely and protective of the environment.

Second, with respect to your statement on misrepresentation, let me just say with all due respect, Congressman Broun, you are wrong. There is nothing of the nature as you speak. The letter, as I have testified in this Committee, that I wrote to the President said that we were submitting a set of safety recommendations. Those safety recommendations are part of what has guided our efforts with respect to the notice to lessees. It is beginning to move forward with respect to a new safety regime in the Outer Continental Shelf.

I also in that letter said I was recommending that we move forward with a moratorium, and I believe the moratorium was ripe then, I believe the moratorium is ripe today because we need to learn the lessons, and right now—I don't want to repeat what I have already said, but there are a number of issues that need to be addressed at this point.

Dr. BROUN. Mr. Secretary, I certainly hope you can walk and chew gum at the same time, and I trust that you can. I respectfully disagree with you on the moratorium, and from a scientific basis.

I would also ask that a detailed response to my letter that I have just mentioned be provided in writing in a timely manner and include all the documents and drafts related to the report. I would remind you that your Department and the Administration must comply promptly with congressional requests from a Member of Congress, especially one who sits on two committees with jurisdiction over your Department.

And as far as your final comment, I think a lot of the American people believe that the decisions made just reek of a political agenda, and not a scientifically driven agenda.

The CHAIRMAN. The gentleman's time has expired.

Dr. BROUN. I believe strongly that policy cannot be made by science, but science can drive policy, and I hope that we can have science integrity, and I look forward to your response, Mr. Secretary. Thank you so much.

The CHAIRMAN. The gentleman's time has expired. The gentleman from Massachusetts, Mr. Markey.

Mr. MARKEY. Thank you very much.

The Obama Administration has authorized 17,500 National Guard troops to respond to this disaster in the four affected states: Louisiana, Mississippi, Alabama and Florida. However, it is only the Governor of a state that can actually deploy these troops, and

thus far only 1,675 are active. According to news reports, the Governor of Louisiana has only deployed 1,053 troops out of 6,000 that has been authorized. Alabama has deployed 432 of 3,000. Florida had deployed only 97 of 2,500, and Mississippi has activated 58 troops out of 6,000.

Mr. Secretary, this is the worst environmental disaster in our nation's history. There is a hurricane in the Gulf. Shouldn't the Governors of these four states immediately deploy all of the National Guard troops that have been authorized to respond?

Secretary SALAZAR. Congressman Markey, the answer is yes as they are needed, and Secretary Napolitano, Director Bromwich and I were on the Gulf Coast probably within, we have been down there 10 times there in Houston since it started, but we made a call from the command center to Secretary Gates and to the White House, and essentially gave the authorization to the states to move forward with the Coast Guard within a few days after this incident occurred.

So it is before me. Frankly, surprising that you do not have the Governors of these states moving forward with the deployment of these National Guard's troops, and we know at the end of the day the cleanup responsibilities ultimately are going to be paid for by BP.

Mr. MARKEY. I agree with you, Mr. Secretary. I think we should really have an all hands on deck mentality, and not using these National Guard troops at this time I think really is a mistake.

Mr. Secretary, we are now confronted with a situation in which hurricane season has arrived, and the well remains uncapped. Mr. Secretary, not only does BP's oil spill response plan for the Gulf of Mexico not adequately prepare for the event of a hurricane if there was a spill, it does not contain the word "hurricane". Mr. Secretary, I sent a letter to BP today asking what preparations they had made for a hurricane in the spill response area. It is clear that BP wasn't prepared for this kind of a double whammy—a hurricane on top of an oil spill.

We do know in the BP response plan that they are prepared to evaluate walruses from the Gulf of Mexico even though no walruses live there in the last three million years. At the same time BP did not mention the word "hurricane" in their response plan.

Do you believe, Mr. Secretary, that not just BP, but every oil company has a responsibility to actually have as part of their spill response capability, the ability to deal with a hurricane?

Secretary SALAZAR. I do. The answer is yes.

Mr. MARKEY. And have you talked to them right now about the level of preparation they have for a hurricane?

Secretary SALAZAR. We have been approached by all of the major companies that have any significant ongoing activity in the Gulf of Mexico with a request that the moratorium that we have in place be lifted, and one of the questions that I asked these companies, and they were all the executives of these companies, was do you believe that there is a capability right now to respond to another oil spill if one were to occur in the Gulf of Mexico, and those are the kind of questions that need to be asked and they need to be answered before there is any lifting of the moratorium.

Mr. MARKEY. Well, I have introduced legislation to require oil companies to have real safety response plans that don't plan on protecting walruses in the Gulf, and don't plan on it always being sunny, 75 degrees without a breeze going through the Gulf because, unfortunately, we are seeing it right now as this hurricane at the beginning of the season descends on the Gulf. There could be catastrophic consequences as a hurricane hits an oil spill.

Finally, Mr. Secretary, BP's CEO Tony Hayward has said that BP did not have the tools in its tool kit to respond to this type of disaster. What is worse, the CEO of Exxon, Chevron, ConocoPhillips all said that their companies would not have been able to respond any better.

Mr. Secretary, would you agree there needs to be a research program to develop twenty-first century oil safety and spill response technologies to ensure that if oil companies are going to drill ultra deep, then the technologies are there to make it ultra safe, and if an accident does occur that the technologies can respond ultra fast to that spill?

Secretary SALAZAR. Congressman Markey, yes, I do believe that and let me, if I may, just add a comment to that. That is, in what really has become I consider to be an Apollo 13-type of a project that has gone on for a very long time. One of the things that is going on is essentially you have the most significant laboratory of learning.

Yes, the consequences are dramatic and horrible from this oil spill, but there is a lot to be learned from what has happened with respect to the ongoing effort to containment what has worked, what has failed, et cetera, and so as a collective responsibility of Interior, of the Congress, of the industry, we need to make sure that those lessons are being learned, and then applied to the future and your focus on oil spill response capability is indeed a very high priority.

Mr. MARKEY. Thank you, Mr. Secretary. Thank you, Mr. Chairman.

The CHAIRMAN. The gentleman from Louisiana, Mr. Fleming.

Mr. FLEMING. Thank you, Mr. Chairman, and thank you, gentlemen, for coming today and answering our questions.

I want to get back to the moratorium. As my colleague Dr. Cassidy calls it so eloquently a jobs moratorium, at least to us in Louisiana. Just to quote something out of the report from, or actually the response by Judge Feldman to the moratorium request. It says,"The report makes no effort to explicitly justify the moratorium," and I think that is really the crux of this. It says it does not discuss any irreparable harm, which is a true barrier that must be overcome in order to put that in place, and yet, as I understand it, there are attempts to put in place another moratorium and I want to ask, Mr. Secretary, have you read or are you familiar with the letter from Governor Jindal dated June 29, regarding his response to a request by your Department to ask for comments on the new moratorium?

Secretary SALAZAR. I have seen the letter from Governor Jindal.

Mr. FLEMING. Mr. Chairman, I would like to enter this into the record with unanimous consent.

The CHAIRMAN. Without objection, so order.

[The letter submitted for the record from The Honorable Bobby Jindal, Governor, State of Louisiana, follows:]

BOBBY JINDAL
Governor
State of Louisiana
Post Office Box 94004
Baton Rouge, LA 70804–9004

June 29, 2010

Honorable Ken Salazar
U.S. Department of Interior
1849 C Street, NW
Washington, D.C. 20240

Re: Restructured OCS Deepwater Drilling Moratorium

Dear Secretary Salazar:

Thank you for your request for comment on the Department of Interior's concept to restructure the deepwater drilling moratorium. The State of Louisiana's priority is both to ensure that offshore drilling is conducted with the utmost safety and regulatory oversight and to ensure the environment and natural resources of the State are protected. Unfortunately, your request for comments by today on a concept without the ability to review and comment on a specific proposal does not comply with the Department's obligation, as required by 43 U.S.C. § 1331, *et seq.,* and 43 U.S.C. § 1334(a), in particular.

The State has not been provided any documents. Not only should a draft of the proposed moratorium be submitted, but also all documents supporting the proposal. Without these documents, the State cannot undertake a meaningful review and therefore a meaningful consultation cannot take place. Moreover, such a short time frame to receive comments is insufficient for the State to analyze the proposed moratorium, especially when the State has not been given any documents to analyze.

As I noted in my letter to you dated June 2. 2010, and as we stated in the attached amicus curiae brief to the U.S. District Court, a six-month deepwater moratorium will have a devastating effect on Louisiana's economy as the rigs may move to other countries for several years to come. The Louisiana Department of Economic Development estimated the loss of over 10,000 Louisiana jobs within just a few months. In addition, Louisiana stands to lose substantial tax revenues as result of six month moratorium due to a significant decline in income and sales taxes. It is critical that a six-month blanket moratorium *not* be imposed on our deepwater activity and that options are considered that allow for the continued drilling activity in the Gulf of Mexico

The State is prepared to provide meaningful and timely feedback on any specific proposal, which ideally would propose to safely and promptly resume operations in the Gulf in a manner that protects the workers and the citizens of this State and the Gulf region, as well as provides the energy this country so desperately needs.

Sincerely,

Bobby Jindal
Governor

Attachment: Amicus Curiae Brief

Mr. FLEMING. Well, I will just mention a couple of things in it. It says, 'The State of Louisiana's priority is both to ensure that offshore drilling is conducted with utmost safety and regulatory oversight, and to ensure the environment and natural resources of the state are protected.'

"Unfortunately, your request for comment by today," which was June 29, yesterday, "comments by today on a concept without the ability to review and comment on a specific proposal does not comply with the Department's obligations as required by 43 U.S.C. 1331 and 43 U.S.C. 1334[a] in particular."

What he is saying here, in essence, is you are asking us to comment on this new moratorium but you haven't given us any documentation. Are you willing, sir, to delay putting forth this moratorium until you indeed provide those documents to the Governor and allow him to comment on those?

Secretary SALAZAR. Congressman Fleming, first, I am confident that the imposition of the moratorium was a correct decision, and I respectfully disagree with the District Court decision, and Department of Justice, and Interior has taken that up on appeal to the Fifth Circuit. We believe that decision was correct.

We also believe that the last 70 days essentially by themselves, if you will, make an Exhibit A as to why the moratorium is essential. Seventy-one days of following all of the efforts to try to deal with this blowout tell us that industry does not have the ability to quickly deal with this kind of blowout scenario. So until we get to the point where we believe that we can have that assurance of safety we will continue to have our hand on the pod's button.

Mr. FLEMING. In other words, no, you will not delay the moratorium and allow the Governor or the State of Louisiana to make those comments and input. Is that the——

Secretary SALAZAR. We worked closely with Governor Jindal on a number of——

Mr. FLEMING. OK.

Secretary SALAZAR.—different points, but we are going to move forward and we are going to do what is right.

Mr. FLEMING. OK, I will accept that as a no.

Well, just to kind of hit the top points here, in the first moratorium we had eight scientific experts who disagreed and did not feel that it was appropriate to put this into place. We have a history of over 40 years and over, I think, about 3,600 drilling units out there in the Gulf, which have never had a problem. To this day, we still don't know what went wrong. We had BP and Transocean here just the other day. They were shrugging their shoulders. They say, even we don't know what went wrong.

I see the smile on your face. They probably know more than what they say they know, and I would agree with you on that. But I don't think we have actually come to an exact answer as to what happened. And then we have the letter on the comments, on which our Governor was not allowed to give input, and then finally we are talking about proposing legislation here by July 14th, and we don't even know what went wrong.

So, isn't this, sir, really more about politics than it is about policy, and certainly about science?

Secretary SALAZAR. Absolutely not, Congressman Fleming. The fact is that the President and our Administration have acted to deal with what is a national crisis that we are facing in the Gulf of Mexico. We have not done anything based on any political motivation here. We have a problem, and our job is to fix the problem, and that is what we are about, and part of fixing the problem is getting the kind of legislative framework and support so that we can assure that there is safety, the right kinds of standards, and the right kind of enforcement with respect to the Outer Continental Shelf, which is part of the reason why I think this hearing is such an important hearing to have.

Mr. FLEMING. And I will respectfully disagree. I think this is more about the Rahm Emanuel, "Never let a crisis go to waste" despite what we hear from the Administration. Mr. Secretary, the facts really don't add up to anything other than this is a, in my opinion and I think to many on the panel here, that this is more about political manipulation. Thank you, sir.

The CHAIRMAN. The gentleman's time has expired. The gentleman from Maryland, Mr. Sarbanes.

Mr. SARBANES. Thank you, Mr. Chairman.

First of all, I wanted to thank Secretary Salazar for your visit the other day to Maryland as part of the President's Great American Outdoors Initiative, and I think being on this listening to us even as you are managing the Gulf spill is critical because you are hearing from Americans all across the country as to what their perspective is going forward on offshore drilling and oil and gas development more broadly, and so I thank you for that, and it was really a treat to have you there in Annapolis.

The second thing I just wanted to mention is, and Congressman Wittman spoke to this a little bit, but, of course, I am particularly focused because of the Chesapeake Bay on this Lease Sale 220. I know that has been withdrawn at this point. I just wanted to say that going forward you can put me in the category of those who will be pretty resistant to putting it back on the table because I think that the sensitivity of that area off the coast of Virginia is critical to the health of the Chesapeake Bay, and the potential risk there is just too high.

Also, when you look at other areas that are going to probably be off limits because of the Department of Defense concerns and so forth, we are talking about something marginal, I think.

I did want to ask a couple of question. The first was we have had plenty of testimony in a number of different committees about the flaws in the response plans that were developed by BP and the rest of the industry, and I know that currently in law there is some process by which these companies sort of certify as to the accuracy and due diligence behind these plans, but it is not all that robust from what I can gather, and I was interested in your perspective and Director Bromwich's as well on whether you think it might be a good idea to have the CEOs of these companies have to, in effect, personally certify to the adequacy of these plans, that they have gone through a rigorous process, and potentially with that personal certification bears some civil liability if it turns out that the right kind of practices were not in place, and the process wasn't carried forward because I think that would create the right kind of behavior modification within the industry if you have people at the top who are responsible for this.

Secretary SALAZAR. Congressman Sarbanes, first, thank you for your leadership with No Child Left Inside, and all the work that you are doing with respect to young people and connecting them to the outdoors.

Second, with respect to your very important question, it is something that needs to be looked at relative to how we look forward with oil spill response plans that are in fact workable. There is no doubt at all that there is an oil spill response plan that is being actuated today as we speak in the Gulf of Mexico, and it has been

underway since April 20. There is also no doubt that it has been inadequate. So the kind of questions that you raise are exactly the kinds of questions we are all examining as we decide how we are going to move forward. I will turn it over to Director Bromwich to amplify.

Mr. BROMWICH. I think your suggestion about requiring a certification is an interesting one. It is obviously a pattern on certifications that are required by CEOS and CFOs, required by Sarbanes-Oxley legislation.

I know from having been in the private sector for a number of years that that requirement for certification has focused the mines of corporate executives on their responsibilities, and has forced them to engage more deeply in making sure that the information that was contained in corporate financial statements are correct. And so as a result of that experience in the corporate sector, I think your proposal has to be taken very seriously.

Mr. SARBANES. Thank you, and I have about 40 seconds left so the second question real quick is, there is a pilot project in the proposed legislation that Chairman Rahall has developed which would look at the opportunity to measure more accurately and through the use of technology exactly what is coming out at the wellhead in terms of the volume of gas and oil that is emitted there, and I think the idea is over time to develop that as another source of figuring out what the right kind of royalty payment should be.

What I am curious about is whether you think it is a good idea to ultimately cut to the chase and say that we are going to determine the royalties by applying it right against what is coming out of the wellhead because the process for determining royalties is kind of a hocus-pocus one once you get further up the chain. So I would like your reaction to the proposal to actually use that volume measured at the wellhead as the basis for determining royalty.

Secretary SALAZAR. Congressman Sarbanes, first, the whole question of royalty simplification is something which we have been working on. I have not reviewed this particular language in the legislation, but we would be happy to do that, and to get back to the Chairman and you with respect to our response on the legislation.

Second, let me say one of the things that we have learned in this 71-day ordeal is that there was a significant lack of instrumentation relative to what is happening on the well, on the blowout preventer, and a whole host of other things, so Secretary Chu and our whole science team that we have had focused on this problem has actually brought much of their knowledge on instrumentation and pressure valves and a whole host of other things into this equation. So I think this will be one of the lessons learned from this Deepwater Horizon tragedy.

Mr. SARBANES. Thank you very much. I yield back.

The CHAIRMAN. Thank you. Mr. Secretary, we know yo have to go. Thank you.

Secretary SALAZAR. Thank you very much, Mr. Chairman, and distinguished members of the Committee.

The CHAIRMAN. Our next Member is the gentleman from Colorado, Mr. Coffman.

Mr. COFFMAN. Thank you, Mr. Chairman.

Mr. Bromwich, the question I had was for Secretary Salazar but I will go ahead and address it to you, and that is because it concerns MMS, which you have a brand new name for it now, but when Secretary Salazar addressed the ethics questions, a number of questions that came out of, I think, the September 2008 IG report that I think were well addressed, I think, by Secretary Salazar, but President Obama in his Oval Office speech a couple of weeks ago, when discussing MMS, said, and I quote, "The pace of reform was just too slow." And what I think that he referred to was the other problems at MMS outside the ethics issues that were to the competency and execution of their oversight of offshore drilling.

Obviously, MMS has been a problem agency for a very long time. In the late 1990s, someone at MMS failed to include a price threshold on OCS leases and GAO estimated this cost the U.S. taxpayers up to $14 billion. Even though the work done by Secretary Salazar to clean up MMS in Denver, the Denver office, though there were still problems at MMS Gulf Operations, on various press releases that four monthly inspections of the Deepwater Horizon in this past year were not done; that permits were approved in as little as five minutes; and other indications that MMS was just not doing a good enough job.

How much do you think that these errors contributed to the disaster, particularly not doing the inspections on Deepwater Horizon, and do you think that they should have been addressed more vigorously?

Mr. BROMWICH. The short answer is I don't know, and I don't think we know whether and to what extent the failure to do comprehensive timely inspections contributed in any way to the disaster. I think the evidence that has come before the public so far, and it is obviously fragmentary, is that there were a combination, as I think has been referred to before, of human and equipment errors that is the responsibility of BP.

It is undoubtedly true, though, that the resources of my agency that it can allocate to inspections is grossly inadequate. I believe there are 62 inspectors to inspect the thousands of installations in the Gulf alone, and that is in stark contrast to the numbers in other parts of the country, so there is absolutely no question that this agency has been inadequately staffed with respect to inspections, and that is something that really needs to change.

Mr. COFFMAN. How about inadequate leadership?

Mr. BROMWICH. I was brought in because of my experience in leading agencies, and I hope to make a big difference in this agency.

Mr. COFFMAN. So your view is that it is not just papered over by more money. The fact is that people weren't doing their job that were assigned to do their job, and that the Secretary of the Interior was not aware during the 16-month tenure that these people were not doing their job.

Mr. BROMWICH. Well, you are making statements and assumptions that haven't come from me.

Mr. COFFMAN. Do you think that the Secretary was aware that these inspections were not taking place?

Mr. BROMWICH. No, I didn't say that either. I don't know whether this was preventable by timely and repeated inspections or not,

and I think we will never know that. That is what I am saying and——

Mr. COFFMAN. Won't——

Mr. BROMWICH. Let me finish, please.

Mr. COFFMAN. No. Won't the investigation look at the issue of the failure of this Department to conduct inspections, and what the ramifications of the failure relate to this crisis?

Mr. BROMWICH. I think there are multiple investigations going on that will explore that issue. Whether anyone is ever going to be able to draw a specific cause and effect relationship between inadequate number of inspectors and inadequate inspectors——

Mr. COFFMAN. Don't you want to know that? Don't you want to know whether or not the failure to conduct these inspections related to this crisis? Don't you want to know that?

Mr. BROMWICH. Of course. Of course. We all do.

Mr. COFFMAN. And you are going to find that out, I hope.

Mr. BROMWICH. I am not going to find that out but the multiple investigations are going to find that out, that is right.

Mr. COFFMAN. Chairman, I yield back.

The CHAIRMAN. The gentleman from Arizona, Mr. Grijalva is recognized.

Mr. GRIJALVA. Thank you, Mr. Chairman, and at the offset I have a couple of questions for Mr. Bromwich, but at the offset let me say that I am a Member of Congress that is very appreciative of the recommendations that Secretary Salazar made to the President for the moratorium on deep sea drilling. I think that was prudent, it was necessary, and given what we know up to this point, the lack of response capability by the company, lacks oversight by the agency, a coziness that has been brought up time and time again between the agency, and this is not all new. This has been a decade of building, and while the moratorium is bringing hardship to many, I think it is still the wise and prudent thing to do until we are sure that another catastrophe is not going to finish devastating that region. This has taken 10 years to get here, and in those 10 years, you know, all the things that we are finding out now have been building, and I think it is important to stop, pause, and reassess where we are at, and where we need to be in the future.

I think there are also some parallels, Mr. Chairman, between offshore and onshore, and the comments that were made by the Secretary about the necessity to talk to the Bureau of Land Management in terms of their permitting process, their categorical exclusion process regarding NEPA, their inspections and oversight, I think is an appropriate next step.

The question I have, Mr. Bromwich, is in your view what changes need to be made in the industry's behavior to improve environmental and safety performance?

We have been talking for the last few months about how to reorganize your agency and other government agencies, how we are going to fund the cleanup, what organic legislation needs to be put together, but we have talked less about what the companies themselves can do to prevent the disaster that we are dealing with.

What steps would you like to see taken in the short and the medium and in the long terms to make sure that this doesn't happen

again, and where that part of that responsibility is falling on industry and their behavior, and your comments on that?

Mr. BROMWICH. Thank you. Thank you very much, sir.

I think it is necessarily a cooperative relationship between the Department of the Interior and my agency specifically and the oil companies, oil and energy companies. We will certainly welcome the suggestions that they have on how to enhance and tighten up necessary regulation, but it is essentially my agency's responsibility and the Interior Department's agency to take a look at the regulations that exist and make determinations as to whether they are adequate based on what we now know and what we are learning about the risks that offshore drilling can create.

And so we are going to be taking a very hard look at whether the existing regulatory structure is adequate. We know that the resources that have been allocated to regulation and enforcement have been inadequate, and so I think we have to look at both, both the regulations that exist and the resources allocated to regulation and enforcement.

I think there have been a lot of allegations and I think significant evidence that there has been too cozy a relationship between regulators and the industry. That is not going to continue. We are going to have an arm's-length, tough, aggressive regulatory program. It is going to be fair, it is going to be even-handed, but it is going to be tough, and in cases of violations of the regulations substantial sanctions will be imposed, and in the case of willful violations of the regulations extraordinarily serious sanctions will be imposed.

Mr. GRIJALVA. Mr. Director, one other question that I brought up a couple of times that has to do with BP Atlantis and the whistleblower who has been telling anybody that would listen that the rig is operating without engineer approved safety documents.

I asked for a set of documents at a subcommittee hearing, and as you go forward with the reorganization a couple of questions: how are we going to deal better with those whistleblower claims and concerns; and two, the lingering question about BP Atlantis, and if that has been fully and properly and scientifically looked at in terms of not having to deal with any spillage or any catastrophe there.

Mr. BROMWICH. Let me take your second question first. I don't know the exact status of the examination of the BP Atlantis matter. I have been on the job eight days as you know, and I know that there are people looking at it and resources being allocated to looking at it, but I can't give you a specific account of where that stands.

With respect to more generally dealing with whistleblower complaints, one of the reasons I created the unit last week, the Investigations and Review Unit, is to specifically give me a SWAT type capability to deal with allegations, including whistleblower allegations, and to run them to ground very quickly to determine whether there is substance behind them or not.

I think that in my tenure as Inspector General for the Department of Justice from 1994 to 1999, I had a lot of experience dealing with whistleblower allegations. I learned that certainly not all whistleblower allegations are true, but that they need to be taken

seriously. They cannot assume to be false because in fact many of the allegations that on first blush appeared to be frivolous turned out to be true, and many allegations that appeared to be accurate turned out to not have evidence to support them. So whistleblowers are important. Their allegations need to be taken seriously, and they need to be investigation serious, and I am going to do that.

Mr. GRIJALVA. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. The gentleman from California, Mr. McClintock.

Mr. MCCLINTOCK. Thank you, Mr. Chairman.

Mr. Bromwich, the President and the Secretary have spoken extensively about the need to reduce America's reliance on foreign oil and also after this disaster, upon the need to reduce our reliance, particularly on deep sea drilling, and yet the Secretary today in his written testimony boasts of canceling the upcoming Beaufort and Chukchi lease sales in the Arctic, removing Bristol Bay altogether from leasing both the current five-year plan as well as the next five-year plan, removing the Pacific Coast in the Northeast entirely from any drilling under a new five-year plans, and I am just wondering how do we reduce our reliance on foreign oil by putting off limits American, domestic supplies?

Mr. BROMWICH. I don't think anybody is putting off limits domestic supplies. I think, as the Secretary said, what seem to be dictated by the Deepwater Horizon accident was pushing the pause button, trying to figure out what happened, and what we learned should shape our deepwater drilling policy. So my understanding is that a large number of entities are investigating that matter. I am sure the Secretary and certainly I will be looking very carefully at what those investigations conclude, and that will shape, I assume, the Secretary's decisions and the Administration's policy as to what to do.

Mr. MCCLINTOCK. By pushing that pause button though you are making us more and more reliant on foreign oil supplies, and by placing surface production off limits you are making us more and more reliant on deep sea drilling.

Mr. BROMWICH. My understanding is that in response to the quite unexpected and unprecedented disaster in the Gulf, the President and the Secretary thought that the actions that they had taken were the prudent things to do. I wasn't around when those decisions were made, but that is my understanding as to what the reasons were.

Mr. MCCLINTOCK. That judgment is open to very, very serious question.

Let me move to the disaster itself. Blowouts have occurred before. Why is it that there was no contingency plan in place?

Mr. BROMWICH. I can't answer that question. I don't know the answer.

Mr. MCCLINTOCK. According to published reports, there was a contingency plan that involved corralling and burning the oil as it reached the surface, and that was shelved by the Department of the Interior as the disaster unfolded.

Mr. BROMWICH. I have no knowledge of that.

Mr. MCCLINTOCK. We keep seeing reports of the Jones Act interfering with the volunteering of foreign vessels for the assistance in this bill. We saw a report last week of oil skimmers being shut-

down by the Coast Guard because they didn't go through a proper Coast Guard inspection for life vests. We have, of course, heard the complaints of the Governor of Louisiana that he cannot get permission to build berms to protect his coast.

The picture is becoming one of a tangled and dysfunctional bureaucracy tripping over itself. Would you care to comment on that now that you have inherited that mess?

Mr. BROMWICH. Well, my sense is that this disaster was unexpected, unprecedented, and therefore they really could not and there was not a plan for dealing with specifically what happened. I know the government has mobilized its resources, and were they ready and was it as smooth an efficient operation from day one? I think the answer to that is no. I think the Administration has acknowledged that the answer was no. But I think that now as we are on day 70 or 71 my impression again from listening to accounts and the development of a concentrated and coordinated effort is that things are vastly improved, and that real progress is being made.

Mr. MCCLINTOCK. We keep hearing these assurances but the Coast Guard incident occurred just a week ago. What is going to be done—well, let me just ask you this question. On the Jones Act itself, why is it that the Administration has not waived that Act so that additional resources can be brought to bear on the problem?

Mr. BROMWICH. I don't know the answer to that. You may have lost your answer when Secretary Salazar left. I really don't know the answer to that.

Mr. MCCLINTOCK. One of the disadvantages of being a freshman. Thank you.

Mr. GRIJALVA [presiding]. Thank you. Ms. DeGette.

Ms. DEGETTE. Thank you very much, Mr. Chairman, and I would like to welcome you, Mr. Bromwich. I think you will be happy you took this job. I hope so because you come with great recommendations.

Mr. BROMWICH. Thank you.

Ms. DEGETTE. When Mr. Coffman was asking you about the agency and the resources of the agency, one of the answers you gave about what is admittedly a very poor regulatory oversight scheme before in the MMS was that the agency needs more personnel to be able to review these applications, and as you can imagine in Congress here we hear this all the time. I mean, everybody needs more personnel. Everybody needs more resources, and certainly we can't disagree that MMS or now the new regulatory scheme will need adequate resources and personnel, but as someone who spent years overseeing the FDA you could put a limited resources and personnel and still not do the job.

So I am wondering if you could talk briefly about your intent as well as requesting new resources and personnel—kind of prioritize some of these applications and these processes, because it is true there are many, many offshore sites. However, it is also true that there are very few deepwater sites and certainly even fewer with the complexity of this site. And so it would seem that as you are revamping the agency you are going to need to take those things into consideration. I am wondering if you can share any initial thoughts with us.

Mr. BROMWICH. First, thank you for your kind words. Second, yes, they are only preliminary and initial thoughts. I think that in addition to getting an enhancement of resources, which I think there is almost universal acknowledgement that the agency needs, we need to examine the way that the inspectors and inspection teams have done their work. We also need to examine the way that the people who were reviewing lease applications and permit applications have prioritized what they are doing.

I can tell you that there will be a top to bottom review of all aspects of what my agency currently does with an eye first to ensuring safety and environmental soundness, but also making sure that drilling that should go on needs to go on does go on.

Ms. DEGETTE. What is your timeframe for that review, and I am assuming you will be happy to come back and talk to this Committee about your findings and your plans?

Mr. BROMWICH. Absolutely. I don't have a timetable yet for it. I have, frankly, spent most of my time here up on the Hill in front of various committees, so I literally have not been able to even yet talk to most of my staff. So I don't want to give you an estimate as to how long it will take that I am giving you totally on the fly.

Ms. DEGETTE. I am assuming you are moving with all due speed though because of this——

Mr. BROMWICH. Faster than that, yes.

Ms. DEGETTE. OK.

Mr. BROMWICH. Absolutely.

Ms. DEGETTE. I want to ask you a couple of specific questions you might not yet know the answer to these questions but, Mr. Chairman, we are looking at this CLEAR Act and it has a lot of reforms that we believe are important to updating the regulatory scheme. One of the areas that I specifically want to talk about is Section 229, which is online availability to the public of information relating to oil and gas chemical use. What this section does is it requires that the list of chemicals used in drilling or completing a well on BLM land made available online within 30 days of completion. This requirement is similar to a requirement in a bill that Representative Hinchey and I introduced on disclosure of components of hydraulic fracturing fluid, and so I am very supportive of this section of the bill.

I am wondering if your agency favors disclosure of the chemicals that are used in drilling on BLM Land.

Mr. BROMWICH. The short answer is I don't know. As you describe the proposal, it sounds intuitively like an appealing requirement. Whether there are reasons why it is not as good an idea as it sounds like to me, I don't know, so again that is the best answer I can give you at this time.

Ms. DEGETTE. Would you mind having someone from your agency supplement your answer so that we can get some sense as we move forward with this legislation?

Mr. BROMWICH. Absolutely.

Ms. DEGETTE. I will tell you as someone who has known Ken Salazar longer any anybody in Congress I would assume he would support it, but we will let your agency speak for itself.

Mr. BROMWICH. And just so you know, my inclination is to be as transparent as possible on almost everything. I just don't know if there are reasons that I am not aware of that militate against it.

Ms. DEGETTE. Sure.

Mr. BROMWICH. So I don't want to make a commitment that I would then later have to retract.

Ms. DEGETTE. Sure. Section 226 of this CLEAR Act requires the Interior Department to develop best management practices for environmentally responsible development of oil and gas on Federal lands. What types of best management requirements would you consider in implementing this provisions, and have you learned anything from the Deepwater Horizon catastrophe that will inform those best management practices?

Mr. BROMWICH. The short answer is that this again I am sorry to say is something that I have not yet had the chance to look at, but certainly in other fields that I have worked in both in government and outside of government paying close attention to what best management practices are and trying to formulate them in a reasonable way is an important part of making things work better.

Ms. DEGETTE. I am sure we all look forward to your next appearance so you can explain all of these issues.

Mr. BROMWICH. Great. Thank you.

Ms. DEGETTE. Thank you, Mr. Chairman.

Mr. LAMBORN. Mr. Chairman.

Mr. GRIJALVA. The gentlelady's time has expired.

Mr. LAMBORN. Mr. Chairman. May I suggest to my colleague from Colorado that she is probably the number two person who has known the Secretary the longest, and I would suggest John Salazar has known him longer.

[Laughter.]

Ms. DEGETTE. Point well taken and the record will be corrected.

The CHAIRMAN. The gentleman from Louisiana, Mr. Cassidy is recognized on his own time.

Mr. CASSIDY. Thank you, Mr. Chairman.

Mr. Bromwich, you know, when the Secretary said that his boot is on the neck of BP, the workers back home feels like the boot is on their neck, and, of course, they are the ones who are not hurting Tony Hayward, it is the rig workers. Now, as it turns out it is not just the deepwater rigs it is also back home, and I know there is a different message coming out of the Department, that there is, in effect, a de facto moratorium on shallow-water drilling, that, sure, we hear it is going to be an easy process and Bob Abbey came by and spoke about it, but it is not.

What do I have here? As of May 6, only two shallow water permits have been issued. They were rescinded quickly. Then some others were put out, but these are not for new rigs. There are approximately 17 shallow water rigs now idle waiting for work that would be provided through the issuance of new drilling permits, and notably the 17 idle rigs were all operating prior to the job moratorium. They represent more than 38 percent of the available marketable rigs.

Now how can we kind of get a straight statement, or let me just ask you, I don't want to it pejoratively, and I apologize. I am hear-

ing from back home that there is a de facto moratorium. In the Members' brief the other day you said no, no. What is the story?

Mr. BROMWICH. Well, my understanding is that there is not a de facto moratorium; that there are some additional requirements that have been imposed by the notice to lessees that have gone out within the last 30 days. My understanding is that there are specific—that completed applications that satisfy those new requirements have been filed as I think the day before yesterday, and my understanding is that my agency is looking at those with the intention of granting those that merit it.

So there is no de facto moratorium that I am aware of. I have certainly given no instructions, Mr. Cassidy, to slow, walk or stop applications, and I think it is a matter of companies complying with the new requirements that have been imposed. So there is no de facto moratorium, but I think that the new requirements are what is taking the additional time.

My understanding, Mr. Cassidy, and I think we talked about this at the meeting last Thursday, is that my agency is doing everything possible through frequent phone calls with members of the affected industry to try to answer——

Mr. CASSIDY. Not to be rude, I accept that.

Mr. BROMWICH. Yes.

Mr. CASSIDY. So ideally, and it was after that that I felt reassured, and then yesterday I get this which tells me, no, indeed there is still, in fact, a de facto moratorium.

Mr. BROMWICH. And what is that?

Mr. CASSIDY. This is messages from back home.

Mr. BROMWICH. OK. OK. My understanding, again, from talking to participants on those phone calls is that they felt and believed that they had answered questions that the industry was posing to them, and that people felt a lot more sure about what they expectations were. So there may be a disconnect between what my people believe is being communicated and what may be understood. I suspect that there is not a misunderstanding on the part of people who were actually on the call and who had an opportunity to ask the questions and get their questions answered, but as the answers trickle down the line perhaps something is being lost in the translation.

Mr. CASSIDY. We will research it and come back to you.

Mr. BROMWICH. Yes, that sounds appropriately.

Mr. CASSIDY. Now speaking about the CLEAR Act, there actually seems to me kind of a weirdness here in the sense that when it comes to what went wrong we have a sense from the White Paper of what went wrong, and what definitely can be taking place to allow OCS drilling to proceed, particularly since your agency has these plans on file. But we won't proceed with that even though we have a definite White Paper with specific recommendations, et cetera.

On the other hand, the CLEAR Act, which we yet haven't had the commission, and there are all these uncertainties regarding what really went wrong from other aspects, for example, the response, we are going to proceed with without hearing the commission.

Now there seems to be a kind of oddness about that. We don't proceed where we have definite answers but we proceed before we have answers on those other areas where we have no answers. Your thoughts on that.

Mr. BROMWICH. Well, again, my ninth day on the job, I haven't read the CLEAR Act, I don't know what the specific requirements are that are contemplated in the CLEAR Act so I really cannot speak to the disconnect you are sensing. I am happy to come back later on when I am better informed on the specific provisions in the CLEAR Act, but I am really not able to help you today.

Mr. CASSIDY. That is fair, that is a fair question. Before I go on to another, I am almost out of time, in deference to colleagues I will yield back. Thank you.

The CHAIRMAN. The gentleman from Washington, Mr. Inslee.

Mr. INSLEE. Thank you. It seems to me as we go forward to try to prevent another tragedy like this we ought to take a look at how we do a regulatory system in aviation, and in my evaluation of this industry this appears to be wildly below the safety standards of the aviation industry, in large part because of our FAA regulatory system.

In the aviation context the way it works is the FAA essentially establishes a standard of performance that you will not have, for instance, a loss of hydraulic system that controls your control surfaces more than one in a billion take-offs or some number. It establishes a statistical expectation for the industry to meet.

It then requires the industry to provide engineering data to show that every particular critical system will meet that statistical expectation, and then it is rigorously evaluated. It seems to me that is a template that we ought to consider following in this industry.

An alternative way is to provide specific item-by-item requirements as to each particular process, or maybe we do both. I guess the question is as we go forward should we create an expectation of a statistical performance level for every critical part of this process and then expect the industry to provide engineering data that their systems will meet that? It seems to me that is a systematic way of going about this that makes sense. What are your thoughts about that kind of approach?

Mr. BROMWICH. I am not nearly as familiar as you are with the standards in the aviation industry or the particular regulatory scheme that has been established by the FAA. I think the truth is that the regulation in this field, that is, the oil and gas field and the offshore in particular, has a lot to learn from a lot of places. And so as we craft what will be a newly revamped and reformed regulatory regime I think and hope that we are going to be looking at a wide variety of regulatory schemes, kind of best practices if you will, and see how relevant and analogous they are to what we need to impose, and so I hope we take what is good from column A, what is good from column B, and what is good from column C, and therefore create sort a best of class, best of breed regulatory scheme.

So I am very interested in the aspects of the FAA regulatory scheme that you are describing. I am not knowledgeable yet enough to have an opinion as to how much of that is graphable on

the oil and gas regulation that I am going to be responsible for, but I am interested in talking with you about that further.

Mr. INSLEE. Well, I would like to do that. For instance, the blowout preventer, highly technical, sophisticated piece of equipment that has some analogy to aircraft, and I think we do need to establish performance standards that are several orders of magnitude higher than we have right now. You know, for instance, we found in our investigation that as many as 50 percent of these things failed under actual conditions. Nobody gets on an airplane if 50 percent of them crash.

So, I will look forward to working with you. I will be proposing some amendments in that regard.

Mr. BROMWICH. Terrific.

Mr. INSLEE. The second thing we think we ought to have is an expectation that the industry uses best available technology. That is also an expectation in the industry, that the best available technology in fact will be used. What are your thoughts about that performance standard?

Mr. BROMWICH. Again, intuitively it sounds sensible to me. It is a little bit puzzling why an industry would use anything other than that. I know that cost considerations loom large. I understand that these companies are properly out to make a profit, but they certainly should not and cannot do that at the expense of taking the necessary precautions.

Mr. INSLEE. Well, unfortunately, I think that has been the case just with one thing we have come across. For instance, having a remote acoustically activated device that would activate the blowout preventer if the communications was lost with the drill rig, it is used in other countries, not here. It is the best available technology and I think we want to move forward.

By the way, we have found several sort of red lights that BP ran through consciously; a decision not to do a cement log test to find out if you had a problem with gas escape; a decision to go with six centralizers rather than 21 as the analysis called for; a decision to use the long string rather than a liner, all of which created increased risks of failure.

Were any or all of those signed of by MMS? Do you know yet whether that happened?

Mr. BROMWICH. I don't know the answer to that. I am confident that in the multiple investigations that are being conducted those specific questions are in the process of being answered.

Mr. INSLEE. Thank you. I look forward to working with you.

Mr. BROMWICH. You, too. Thank you.

Ms. BORDALLO [presiding]. I thank the gentleman from Washington, and now I would like to recognize myself. I have a few questions for—I am sorry, I am sorry. I would like to recognize the gentlelady from Wyoming.

Ms. LUMMIS. Thank you, Madam Chairman.

Mr. Bromwich, you are the head of the Bureau of Ocean Energy. What experience do you have in ocean energy whether it is oil and gas or wave energy or wind energy?

Mr. BROMWICH. I don't have any experience in ocean energy. I do have some experience in the energy sector. I have represented a number of energy clients on nonocean-related matters during my

last 10 plus years of law practice, but I have no specific expertise on ocean energy.

I would point out that one of the things I did as a lawyer was to gain expertise on matters that I previously knew nothing about, and did a two-year-long investigation of the Houston Police Department crime lab, which was one of the most, if not the most expensive forensic science investigations ever done. I don't know much forensic science, but I recruited a crack team of forensic scientists who were the best in the business, and as a result of working with them, I learned a tremendous amount about it and put out a lengthy, nearly 300-page report in the summer of 2007 that has been widely acclaimed as one of the best examinations of a forensic lab ever done.

So I don't think that a lack of experience specifically with ocean energy disables me from learning about it from people who do have the technical expertise, and learning enough of the technical issues to be able to do my job appropriately.

Ms. LUMMIS. Thank you. I now have some questions about the draft bill in front of me, and as Secretary Salazar said, we are dealing with a national crisis in the Gulf of Mexico, and you have called it an unprecedented disaster. So I am curious why this bill deals with changing BLM's permitting and leasing authority. Director Bob Abbey of the BLM was in here and told this Committee when he testified that he did not believe it was a wise idea to remove leasing and permitting authority from the BLM. So I am curious why a draft that is intended to deal with a national crisis in the Gulf of Mexico includes that provision.

I am further curious about why a bill that is supposed to deal with a national crisis in the Gulf of Mexico changes the requirements for issuing oil and gas on BLM and Forest Service land so it would require the issuance in areas where energy development would not conflict with other land uses.

You know, by its very nature the multiple use concept that is articulated in FLMA and the National Forest Management Act requires a matter of resolving inevitable conflicts, so I find that curious.

I also find it interesting that this bill that is supposed to be dealing with a national crisis in the Gulf of Mexico changes onshore lease sales from a sealed bid process to—excuse me—changes onshore lease sales to a sealed bid process, removing the ability to use live auction bids. Interestingly, you did away with the royalty-in-kind program, which used a sealed bid process whereas onshore used a live auction, and now you are taking the bid process that was used in royalty-in-kind and applying it to the onshore in a bill that is supposed to deal with the national crisis in the Gulf of Mexico. Fascinating.

Another thing in a bill that is supposed to deal with a national crisis in the Gulf of Mexico changes provisions to the Federal Oil and Gas Royalty Simplification and Fairness Act taking out the negotiations which occurred in the 1990s between industry and the Federal agencies under the Clinton Administration, and at that time the states, which I was involved with, and takes away the provisions that were intended to work with industry, protecting the agency from having to meet deadlines, removing provisions where

industry has to meet deadlines, and all along that bill, which was a delicate balance between industry, the state and the Federal Government, just completely threw the states under the bus at the time it was enacted.

So I am looking at this bill and saying this is supposed to deal with a national crisis in the Gulf of Mexico? Most of this bill has absolutely nothing to do with the national crisis in the Gulf of Mexico, and so I am disappointed. I would just say that we are not using the culmination of these hearings, which are focused on the national disaster in the Gulf of Mexico, to craft legislation to deal with the national disaster in the Gulf of Mexico. We are using this legislation to deal with many, many other subjects that require much more discussion and vetting than is going to occur within the national crisis in the Gulf of Mexico when that, I believe, is where our attention should like, and Madam Chairman, my time is up.

Ms. BORDALLO. I thank the lady from Wyoming, and now I would like to recognize the gentleman from California, Mr. Costa.

Mr. COSTA. Thank you very much, Madam Chairwoman.

I have a couple questions kind of in the weeds and I know you have been there eight days so——

Mr. BROMWICH. Not eight full days yet.

Mr. COSTA. Seven and a half.

Mr. BROMWICH. Seven and a half days.

Mr. COSTA. All right, very good. Well, we will see how we do, and then I would like to ask some broader general questions.

In the technical area in this legislation, Mr. Director, Section 222 of the ll requires bi-annual reports from the lessees to address the steps taken for diligent developed lease. This means that lessees would have to compile at least eight reports as I understand it during a lease term. If they don't develop a lease within that term, they would have to relinquish the lease anyway. Do you think this extra paperwork is necessary, and do you suspect there is a better way of trying to address this for the holders of these Federal leases?

Mr. BROMWICH. The answer is I don't know whether it is necessary. I don't know what the——

Mr. COSTA. Would you take a review of that——

Mr. BROMWICH. Sure.

Mr. COSTA [continuing]. As you are looking at this and get back to us?

Mr. BROMWICH. Absolutely.

Mr. COSTA. Another Section 221 of the CLEAR Act requires you to define an establish the diligent development benchmarks for oil and gas leases. Again, you are not an expert in this area, you have already submitted that, but I think we know that finding and developing the appropriate energy sources is not a standardized process, whether we are talking about shallow or deepwater. I am wondering how your new rearranged agency is going to deal with the topography, the reservoir characteristics and composition of these resources as well as the environmental considerations, market conditions, and economic factors that would define the benchmarks.

I mean, when you find the carbon footprint, having been out there, and I Chair the subcommittee, so we are going to be talking some more and we will see more of you, but I have also been to

the Middle East, and like there is an 8-in-10 chance you put a hole in the ground in Iraq, and you are going to have a significant find, and it is about 40 percent in the Gulf. So developing where a significant carbon find is, whether it be oil or gas, is not a slam dunk to say the least. So I am just wondering how this is going to work under Section 221.

Mr. BROMWICH. I can't give you a detailed answer to that. I look forward to working with you.

Mr. COSTA. Would you get back to me on that as well?

Mr. BROMWICH. Yes.

Mr. COSTA. OK, let us talk about more like 50,000 feet up.

Mr. BROMWICH. OK.

Mr. COSTA. Maybe you can respond to these.

Mr. BROMWICH. Sure.

Mr. COSTA. Do you think that the use of shallow and deepwater—use of oil and gas in shallow and deepwater sources will continue to be a part of our nation's energy portfolio in the foreseeable future?

Mr. BROMWICH. My understanding is that it will, yes.

Mr. COSTA. I mean, I don't see any way out of it within the next 10 or 12——

Mr. BROMWICH. I don't think anybody does.

Mr. COSTA. OK. So obviously you role, in part, is to ensure that we can do it as safely as possible.

Mr. BROMWICH. That is exactly right.

Mr. COSTA. Then how do you plan to use this situation as an opportunity to restore confidence by the American public that in fact we can do this safely?

Mr. BROMWICH. Well, I think one of the advantages of having so many investigations of what went wrong with the Deepwater Horizon is that we will have a wealth of information accumulating over the next few months as to what the specific issues were that caused the blowout and caused the extraordinary and devastating spill that is now being dealt with. I think that once that evidence has been accumulated, it is analyzed, it is synthesized, that needs to be presented to the American people in an understandable way so that that can generate the confidence that the drilling that will continue on the future, both in shallow water and deepwater will be done in an environmentally safe and sound manner.

Mr. COSTA. A technical question again. You did comment that when you look at the personnel available with Minerals and Management Service today to go out there and do the appropriate determination as to whether or not even the existing regulations are being followed as wilfully and adequate, have you taken upon yourself to begin to make an evaluation as to what you are going to need, the necessary personnel to—

Mr. BROMWICH. Oh, yes, absolutely. In fact, there is a lot of good work that has already gone on in the Department.

Mr. COSTA. How much are you going to need to——

Mr. BROMWICH. I think it is a very substantial number. The Department is still working through those numbers.

Mr. COSTA. Have you done a comparative analysis between the Secretary's proposal—again, I know you are new—for the reorganization and the proposal that we are looking at in this legislation?

Mr. BROMWICH. I don't have that kind of comparison.

Mr. COSTA. I would like you to be able to sit down and do that and get back to us, and then we may use that as a means for a subcommittee hearing to do that comparative analysis or at least have that conversation.

Mr. BROMWICH. Very good.

Mr. COSTA. All right. My time has expired. Thank you.

Mr. BROMWICH. Thank you very much.

Mr. COSTA. And we look forward to having some more conversations and I wish you good luck.

Mr. BROMWICH. Terrific.

Mr. COSTA. And obviously our nation's long-term success in terms of all the energy tools that are in our energy toolbox depend upon the job that you do, so we look forward to continuing to work with you.

Mr. BROMWICH. Thank you.

Ms. BORDALLO. I thank the gentleman from California, Mr. Costa, and now I would like to recognize the acting Ranking Member, Mr. Gohmert from Texas.

Mr. GOHMERT. Thank you, Madam Chair, and appreciate your patience, Mr. Bromwich, and obviously what is going on right now are votes. We have already had this hearing interrupted once with votes, and in that we recognize the importance of special education teachers, named a post office, recognized the California cities' anniversary, and named a V.A. outpatient clinic, and right now we are voting on the previous question in rule. My vote won't have an effect in those and so I preferred to stay here and finish so that you would not have to sit through another hour and come back.

Mr. BROMWICH. Thank you. I appreciate it.

Mr. GOHMERT. And I appreciate the Chair's indulgence in doing that, and it is obviously pretty tough to be on the job for eight days and then come and get a grilling over what is going on in an event that people on both sides of the aisle are very upset about.

Mr. BROMWICH. Right.

Mr. GOHMERT. And I recognize that, and it says a lot about you, that you are willing to come in here and deal with that.

Mr. BROMWICH. Thank you.

Mr. GOHMERT. And I appreciate it. I had hoped to ask the Secretary about his comments directly. Since he had to leave, all I can do is comment, and get the takeaway from it. But in response to Mr. Markey, Secretary Salazar basically indicated his state should employ all the National Guard troops they need, and he was surprised the states did not move forward with deploying troops and doing what they need.

Now in hearing from my former classmate here in Congress, Bobby Jindal, they felt so frustrated because they have had to get permission from people to do all the different things they are doing, and it seemed like—I know there was one time where they just moved ahead and then got permission as they were about to start anyway, but it sounds like since the Secretary is surprised that the states did not move forward with what they need, that the wonderful takeaway from the hearing today based on the Secretary's statements is that Governor Jindal and other Governors just need to do what they need. They have full authorization to do that. They

don't have to worry about getting government approval, and that way in the future they can avoid having the Secretary of the Interior be surprised that they didn't move forward with what they need. They just need to go ahead and do it, and not ask permission from another Federal authority, not the Coast Guard, not the Interior, not FEMA, not anybody else that is being sent down there to stand in the way of what they need to do. They just need to do it and that way the Secretary won't have to be surprised that the states haven't done what they need to do.

And I could not believe he would sit here and say that. With all the things that have not been done with regard to the inspections, and I know as you get into this I am going to be anxious to hear your take on what all has occurred and not occurred. Well, we had Director Birnbaum in here when she was still director, and I had asked about these offshore inspectors.

Now, you are coming into this, and I am telling you, having heard the testimony, I am telling you something has got to be done. You have go unionized offshore inspectors, and she told us that the check and balance was to send a pair together. That way they can watch each other. They can report on what the other is doing and not doing, and that way they will make sure that both of them are really doing their job because they know the other is watching over their shoulder.

When I asked her wouldn't it have been a good idea if the last unionized pair that went out to the Deepwater Horizon rig had not been a father and son team, she indicated it was under investigation. She really couldn't comment. I am telling you she was not willing to say this, but we should not have father and son teams going out there. That whole system has got to be changed. And if there are restrictions on travel or hours they can work, it has got to be done.

I do want to ask, though, how long was the moratorium or maybe it is still going on for coal mining in West Virginia after the 29 miners were killed? Is that still in place?

Mr. BROMWICH. I don't know the answer to that.

Mr. GOHMERT. OK. Was there ever a moratorium?

Mr. BROMWICH. I don't know the answer to that.

Mr. GOHMERT. Well, I can tell you there was not one, and I would like to know why not. If we have to have a moratorium, not just on the unsafe practices British Petroleum may have had and that may be going on on some of their rigs, because we know they have a dismal safety record compared to other companies, but then also take out their competitors with a moratorium, then why would there be no moratorium when 29 coal miners are killed? That makes no sense at all.

And also, because of your experience and all, the Secretary said he believed the moratorium on drilling was correct. As you know from your background, it is not enough to believe something, you have to have evidence, and the court was shocked that there was not evidence; that it was clearly arbitrary and capricious based on the lack of evidence; and so please now that you are in place with your background you can help them understand you don't do things based on beliefs, you do them based on evidence, and I think you can have a profound effect in that regard.

Mr. BROMWICH. Well, thank you.

Mr. GOHMERT. Do you have a comment?

Mr. BROMWICH. Just to respond briefly to one of your points. As you know, the Department and the Department of Justice are appealing the judge's decision.

Mr. GOHMERT. I know that. They announced that before they even read the opinion. That would have been a good idea.

Mr. BROMWICH. Well, I am not sure that is true.

Mr. GOHMERT. They said that.

Mr. BROMWICH. OK. But I know they believe the judge's decision was wrong and that is why they moved for a stay, and an expedited appeal to the Fifth Circuit.

Mr. GOHMERT. Some of the worst decisions or votes in this Congress have been when people did not read the bills, and so I would recommend the DOJ do the same thing before they decide to appeal.

But anyway, I would appreciate your looking into these matters. These are really serious matters. You are walking into a fire storm. I recognize that. I appreciate your willingness to do that, but we are going to have to get some answers, and I hope you will be able to get them sooner rather than later. Thank you.

Mr. BROMWICH. Thank you very much, Congressman.

Ms. BORDALLO. I thank the gentleman from Texas, Mr. Gohmert, and welcome to the hearing, Mr. Bromwich.

Mr. BROMWICH. Thank you.

Ms. BORDALLO. I understand you have been in the job eight days, and you have been to several hearings, is that correct?

Ms. BORDALLO. That is correct. This is my third.

Ms. BORDALLO. Well, you are a brave soul.

Mr. BROMWICH. Thank you.

Ms. BORDALLO. I have a few questions to ask. Last week you testified before the Senate Energy Committee that you needed to study the proposed reorganization so you could make a recommendation about it. Now, does this mean that splitting up MMS into three agencies, as you announced in the secretarial order, is that not set in stone? Do you believe this is a good thing?

Mr. BROMWICH. Thank you very much for your question. When I was asked to take this job, I was informed that there was a proposal that had already been made to divide the then existing MMS into three different pieces. Secretary Salazar said he thought it was fair and appropriate that I have the ability to understand the reorganization proposal and make any modifications that I thought were appropriate based on my learning more about it and getting comfortable with it.

Although this is my third hearing and there have been a lot of other things I needed to do, I have had further conversations both with the Secretary and with people who have spent a good amount of time dealing with this issue, studying the issue, dealing with employees in my organization to get their views on things, and I am far more comfortable today on day eight than I was on day one that that is the right path forward.

Ms. BORDALLO. So you are looking to the three-way split?

Mr. BROMWICH. Based on what I know, that makes quite a bit of sense.

Ms. BORDALLO. Thank you. And Mr. Bromwich, I understand that there are some additional subsea tests that are being conducted on the blowout preventers being used on the relief wells, and that such testing was previously thought to not be possible. Would you describe in more detail what type of tests are being run?

Mr. BROMWICH. I wish I could but I can't. I don't know the specifics of what kind of subsea tests are currently being conducted.

Ms. BORDALLO. All right.

Mr. BROMWICH. As I said before, there are multiple investigations ongoing. I have not had time, frankly, to find out where the different investigations are. There is one that is jointly being conducted by my agency and the Coast Guard. The next set of public hearings are scheduled for the week of July 19. I plan to go down there for at least part of that, as part of the process, in which I learn more about the specific issues that are being explored in that investigation.

Ms. BORDALLO. That is fair enough. Thank you.

And my last question, do you believe that a training academy for inspector such as is proposed in Mr. Rahall's draft would be a good idea? And do you think there would be any efficiencies in having a combined onshore and offshore inspection force?

Mr. BROMWICH. It is a very intriguing idea. One of the things that I have already begun to focus on is how we get an experienced, competent, capable cohort of inspectors, not father and son teams, but teams of inspectors who know what they are doing, that gain experience in what they are doing, and yet don't suffer from the kind of coziness with industry that my agency has been so criticized for.

So, we are exploring that. One of the things I want to explore is a program to recruit talented petroleum engineering students straight out of school, pair them with senior inspectors, the best that I have got, and bring them along a whole new generation of inspectors who are devoted to public service, and are not looking around the corner for a job with industry two or four or six years down the road.

I think we have to find a way to establish the independence——

Ms. BORDALLO. Absolutely.

Mr. BROMWICH [continuing]. Of the inspectors, and make sure that their commitment is to the public interest to the safety, to the protection of the environment, and that they are not looking around the corner at the oil company that is going to pay their salary three years down the road.

Ms. BORDALLO. Thank you. Thank you very much. I would like to thank you, and be sure you thank the Secretary, Mr. Salazar. I know he had to leave. And thank you for your time today. Yes? The Ranking Member, go ahead.

Mr. GOHMERT. I would just like to make a request or an answer in writing. Our time on the hearing is about to conclude. But we had had a hearing in here a year or so ago where Inspector General Devaney had investigated the 1998-1999 offshore leases from which the price adjustment language, which was intentionally pulled——

Mr. BROMWICH. The which language? I am sorry.

Mr. GOHMERT. The price adjustment language dealing with the price of oil was pulled for those two years, and he had indicated in here, because obviously when something happens that costs us hundreds of millions or billions of dollars to the Treasury, I don't care what party anybody is in, we ought to want to get to the bottom of it, and anyway he had indicated that there were at least two or three people that he had not interviewed because they had left government service. One person that was not interviewed apparently was even involved in signing the notices for these leases and whatnot, and it turned out she went to work for British Petroleum for eight years, and came off that employment last June when the press release from Secretary Salazar indicates she went back to work for Minerals Management.

I am not sure in the breakup where Sylvia Baca will be working, but I think it would be interesting to know if her responsibilities involve anything at all, and now that she is back in government service, if the IG's office would be alerted that somebody they may not have interviewed before about what costs this country so much money might be interviewed by the IG now to determine more answers than we were able to get, or that the IG was able to get previously. So just to find out where all that sits, has the IG been alerted that she is back, and so we can find out what job she had, does it involve BP and that kind of things. But I appreciate it.

Mr. BROMWICH. My understanding, Congressman, is that she is recused from any and all BP matters.

Mr. GOHMERT. Yes, we were told that previously, but what one person thinks is any and all matters may not be to all appropriateness to somebody else.

Mr. BROMWICH. Fair enough.

Mr. GOHMERT. But I have heard recused from matters before that might be a conflict, and I would really like to know exactly what those are. Thank you.

Mr. BROMWICH. Thank you.

Ms. BORDALLO. I thank the gentleman. Also, Director Bromwich, you were asked many questions today which you were not able to answer so I am sure that you will be able to supply the Committee with the answers to these questions, and the record of this hearing will be held open for 10 days. Is that correct? Yes.

The Committee will now recess until the end of these votes, I think there are three votes down on the Floor, we are going into the second one, so it will probably be about 15 minutes before we introduce the second panel. And I thank you again, Director Bromwich, for being with us this morning.

Mr. BROMWICH. Thank you very much.

Ms. BORDALLO. And now the Committee stands in recess.

[Recess.]

Ms. BORDALLO. The Full Committee of the Natural Resources will now come to order, and we welcome the second panel of witnesses. I would like to welcome Ms. Janis Searles Jones, Vice President for National Conservation Policy and Legal Affairs, Ocean Conservancy; and Dr. David E. Dismukes, Ph.D., Associate Executive Director and Director of Policy Analysis, Center for Energy Studies, Louisiana State University.

I welcome you both, and we will begin with you, Ms. Jones.

STATEMENT OF JANIS SEARLES JONES, VICE PRESIDENT FOR NATIONAL CONSERVATION POLICY AND LEGAL AFFAIRS, OCEAN CONSERVANCY

Ms. JONES. Thank you, Congressman Bordallo.

Chairman Rahall, Ranking Member Hastings, and distinguished members of the Committee, thank you for the invitation to participate in today's hearing. My name is Janis Jones. I am the Vice President of Programs for Ocean Conservancy, a national conservation organization that has promoted healthy and diverse ocean ecosystems since 1972. I have worked on marine issues for almost 15 years and I serve as an adjunct faculty member of the Northwestern School of Lewis and Clark, Northwestern School of Law at Lewis and Clark College.

The oil spill in the Gulf of Mexico is a human and environmental tragedy. Lives have been lost, livelihoods have been destroyed, and the region is being subjected to what the President has called the worst environmental disaster America has ever faced. We may never be able to calculate the full economic and ecological impact of the BP Deepwater Horizon spill. We do know that in the Gulf region alone fishing and coastal tourism provide $14.5 billion annually in wages and income impacts, and support over 820,000 jobs, and we know that our current OCS policy has been both an economic and environmental failure.

As this Committee recognized long before the current tragedy, there is an urgent need for reform of our Outer Continental Shelf regime, and the time for action is now. The Discussion Draft under consideration today represents a significant step forward. The CLEAR Act addresses five key challenges facing our nation.

First, our national policy for the OCS is inadequate and we lack meaningful standards to protect the environment and ocean and coastal economies.

The amendments contained in the Discussion Draft would begin to balance an OCS policy that is focused far too much on oil and gas development and far too little on the consequences of such development. The standard against which we must measure decisions about whether, and if so under what conditions, to permit OCS development must be one that protects the heath of marine ecosystems. We believe the Discussion Draft should be improved to reflect that standard.

Second, the process for planning and implementing OCS oil and gas activities is badly broken.

The amendments contained in the Discussion Draft would begin to address the process that has been implemented to shield full and fair consideration of the risks and consequences of OCS development. OCS planning, exploration, and development must be subjected to meaningful environmental analysis which requires baseline information, appropriate geographic scales of analysis, and must involve expert agencies other than the MMS or it successors.

The Discussion Draft take some great strides in that direction, such as requiring consultation with NOAA, but could be further strengthened.

Third, at the BP Deepwater Horizon continues to painfully demonstrate, there are insufficient standards for oil spill prevention and response.

The Discussion Draft proposes significant improvements, including more rigorous safety and technology standards and more robust spill response plans. We support the amendments and suggest further strengthening the provisions by requiring consideration of the availability of oil spill response infrastructure at the five-year plan level, and by conditioning the issuance of exploration permits on a real world demonstration of response capability.

Fourth, despite the importance of coastal and marine ecosystems and the risks posed by oil and gas activities, there is no dedicated funding for ocean, coastal and Great Lakes conservation and management.

The Discussion Draft's creation of a new Ocean Resources, Conservation and Assistance Fund is an action that is long overdue and one that we strongly support.

Finally, as every commission that has examined ocean policy since the late sixties has concluded, a single sector approach to ocean governance is fundamentally flawed and has led to conflicts among users and the degradation of marine ecosystems. The exiting oil and gas planning process is a stark example of why we must move to a system of multi-objective regional planning for the conservation and management of marine resources.

The Discussion Draft moves in the right direction and should be broadened to address multiple objectives, not juts energy activities.

Offshore drilling for oil and gas, to the extent it is to consider in the wake of the disaster in the Gulf, must be considered only as a bridge to a clean energy future. It cannot continue under a system that fails to protect the ocean and coastal economies and ecosystems upon which we all rely. The need for reform is urgent. I thank the Committee for seeking to address that need, and for the opportunity to testify.

[The prepared statement of Ms. Jones follows:]

Statement of Janis Jones, Vice President of Programs, Ocean Conservancy

Chairman Rahall, Ranking Member Hastings and Members of the Committee, thank you for the invitation to participate in today's hearing. My name is Janis Jones and I am the Vice President of Programs for Ocean Conservancy, a national marine conservation organization that has promoted healthy and diverse ocean ecosystems since its founding in 1972. I have worked on marine issues for almost fifteen years, and I serve as an adjunct faculty member of the Northwestern School of Law at Lewis and Clark College in Portland, Oregon.

What we are currently witnessing in the Gulf is a human and environmental tragedy. Even as the disaster continues to unfold, many of its underlying causes are clear: regulators who uncritically accepted the assurances of the oil industry regarding the safety of offshore drilling, inadequate safety and environmental standards, and a false notion that the risk of an accident of this magnitude was so insignificant that it was unworthy of evaluation. It is noteworthy, Mr. Chairman, that this Committee had identified many of the systemic failures that enabled such practices to occur during hearings last year, and that the Consolidated Land, Energy, and Aquatic Resources (CLEAR) Act was introduced before the current tragedy in the Gulf began. I would like to thank the Committee for its work to revise that legislation in recent weeks, and for releasing the Discussion Draft under consideration today.

Continued offshore drilling must be considered only as a bridge to a clean energy future; and it cannot continue under a system that fails to protect adequately the coastal and ocean ecosystems—including living coastal and marine resources and habitat—on which we all rely. The law governing oil and gas activities in the Outer Continental Shelf (OCS) lacks provisions that protect ocean and coastal environments and the economies that depend on them; it largely excludes expert agencies from the development process; and it lacks integrated planning to consider and ad-

dress conflicts and maximize resource protection *and* sustainable production. The federal agency charged with administering OCS oil and gas activities has proved incapable of effective regulation and oversight, and our ability to prepare for, respond to, and clean up oil spills has not kept pace with advances in drilling and extraction technologies. The Discussion Draft takes important steps to correct these shortcomings.

Overall we view this Discussion Draft as a very positive step forward in addressing an urgent set of problems. My testimony focuses mainly on the provisions that affect ocean and coastal ecosystems. The first section of my testimony identifies key weaknesses or gaps in current ocean and energy policy that Congress should address as it moves forward with energy reform legislation. The second section highlights provisions in the proposed legislation that Ocean Conservancy supports as constructively addressing those weaknesses or gaps. The third section discusses provisions of the Discussion Draft that we believe should be strengthened.

I. WEAKNESSES OR GAPS IN CURRENT OCEAN AND ENERGY POLICY: PRIORITIES FOR CHANGE

For purposes of this testimony, key shortcomings in ocean and energy policy can be grouped into five categories: (1) an inadequate national policy for the OCS and a lack of substantive standards to protect the environment and ocean and coastal economies; (2) flawed processes for planning and implementing OCS oil and gas activities; (3) insufficient standards for oil spill prevention and response; (4) a lack of dedicated funding for ocean, coastal, and Great Lakes conservation and management; and (5) a failure to integrate oil and gas activities with other ocean planning and management decisions. The following paragraphs briefly describe these problems and suggest solutions.

First, our national OCS policy focuses too much on development and extraction of oil and gas, and not enough on the consequences of doing so. Congress should amend the policy to recognize that oil and gas activities on the OCS are appropriate only in those areas where it can be demonstrated that oil and gas activities can proceed with minimal risk to the health of ocean ecosystems. In addition to policy shortcomings, the OCS Lands Act (OCSLA) does not contain meaningful, substantive standards to ensure protection of the marine environment. The statute should be amended to prioritize protection and maintenance of healthy marine and coastal ecosystems. Congress should ensure that baseline science is in place before OCS areas are leased, important ecological areas are placed off-limits to leasing and drilling, and facilities use the best available technologies and safety procedures to maximize the protection of workers, ocean and coastal ecosystems and the coastal businesses and economies that rely on them.

Second, the existing process for making decisions about and managing oil and gas activities on the OCS does not do enough to empower governmental agencies with the greatest expertise in ocean issues. OCSLA gives the Secretary too much discretion to permit oil and gas activities where they do not belong and risks substantial harm to ocean and coastal ecosystems. This process should be changed to give expert agencies—such as the National Oceanic and Atmospheric Administration (NOAA), the U.S. Fish and Wildlife Service (USFWS), the U.S. Coast Guard (USCG), and others—a greater role in decisions about, and preparation of environmental analyses for, OCS oil and gas activities. Further, planning and leasing decisions involve such broad areas of the ocean that there is little opportunity for meaningful environmental analysis or public participation before exploration and drilling activities proceed. OCS planning areas should be smaller and precisely focused only on specific lease tracts to facilitate more meaningful review.

Third, as the aftermath of the BP *Deepwater Horizon* continues to demonstrate painfully, current standards for oil spill prevention and response are inadequate. Congress should change federal law to require more rigorous safety and technology standards and more robust spill response plans. For example, OCS operators should be required to plan for worst-case spills, including impacts from and response to blowouts. OCS drilling safety equipment should be certified by an independent third-party, should use the best available technology, and should incorporate redundant blowout prevention systems. To be effective in an emergency, sufficient response capability must be on site and able to be mobilized immediately, and a demonstration of that capability must be made before activity commences.

Fourth, despite the importance of coastal and marine ecosystems and the risks posed by oil and gas activities, there is no dedicated source of funding to support conservation and management in these regions. Congress should invest revenues derived from offshore development in a fund dedicated to ocean and coastal restoration and conservation.

Fifth, decision-making about oil and gas activities on the OCS is largely disconnected from other ocean planning and management decisions. This single-sector approach contributes significantly to conflicts among users and the degradation of marine ecosystems. Congress should move to a system that relies upon multi-objective regional planning for the conservation and management of marine resources.

The Discussion Draft contains various provisions that address, or begin to address, many of these problems. Below, Section II highlights critical provisions that make positive changes and should be retained as the CLEAR Act moves forward in the legislative process. Section III discusses provisions that should be strengthened or added to the CLEAR Act to ensure effective and comprehensive reform.

II. PROVISIONS OF THE CLEAR ACT THAT IMPROVE OCEAN AND ENERGY POLICIES

The following paragraphs highlight selected provisions of the Discussion Draft that are particularly important and should be carried forward.[1] In some instances, this testimony recommends changes to these provisions, detailed in Section III, that are intended to further strengthen or clarify the current proposed legislative language.

A. Title I: New Department of the Interior Agencies

Until recent restructuring within the Department of Interior (DOI), DOI's Minerals Management Service (MMS) was responsible for the administration of oil and gas activities on the OCS, including evaluation, planning, regulation, and collection of revenue generated through lease sales and royalties. The *Deepwater Horizon* disaster brought to the public's attention the potential conflicts between the agency's revenue-generating, planning, and environmental and safety enforcement functions. Additionally, reports and investigations by the U.S. Government Accountability Office (GAO) and DOI's Office of Inspector General (OIG) have revealed a troubling history of MMS's failure to effectively track, collect, audit, and enforce royalty and other payments due from industry. And in recent years, reports have revealed an inappropriately close relationship between MMS employees and industry members, instances of unlawful behavior, and an MMS culture of disregard for ethical and substantive duties.

For all of the above reasons, we support the CLEAR Act's abolishment of MMS, creation of three separate DOI agencies, and other statutory changes. The following provisions are particularly important:

- the abolishment of MMS (Section 107) and the creation of separate agencies—the Bureau of Energy and Resource Management (Section 101), the Bureau of Safety and Environmental Enforcement (Section 102), and the Office of Natural Resources Revenue (Section 103)—to carry out MMS's functions and duties;
- with some changes noted below, the requirement that the Secretary of the Interior create an independent office within the Bureau of Energy and Resource Management to carry out environmental studies and to conduct environmental analyses (Section 101(c)(3));
- the requirement that the Secretary of the Interior certify annually that certain Bureau of Energy and Resource Management, Bureau of Safety and Environmental Enforcement, and Office of Natural Resources Revenue officers and employees are in compliance with ethics laws and regulations (Section 104), and the requirement that Bureau of Safety and Environmental Enforcement inspectors are qualified, trained, and meet the highest ethical standards (Section 102(e));
- with some changes noted below, the creation of an independent audit and oversight program to monitor administration of the revenue program (Section 103(d)); and
- with some changes noted below, the creation of an OCS Safety and Environmental Advisory Board to provide independent scientific and technical advice to the Secretary of the Interior and the Directors of the Bureau Energy and Resource Management and the Director of the Bureau of Safety and Environmental Enforcement (Section 109).

B. Title II: OCSLA Reform

As noted above, OCSLA sets forth an inadequate and outdated national OCS policy and lacks meaningful environmental and safety standards. Title II of the Discussion Draft makes many important and positive changes to OCSLA. While these

[1] This Section includes provisions that Ocean Conservancy feels are particularly important or noteworthy. If a particular provision is not listed in this Section, it does not indicate that Ocean Conservancy does not support the provision.

changes will require additional modification to be most effective—see Section III, below—Title II makes great strides in improving OCSLA. Among the most important provisions are amendments that, among other things:

- remedy flaws in the national OCS policy (Section 203);
- require the Secretary of the Interior to promulgate new, more protective regulations and in so doing, to consider the views of the Secretary of Commerce on matters that may affect the marine and coastal environment (Section 205);
- change the leasing provisions of OCSLA to disqualify parties not in compliance with certain safety or environmental requirements from bidding on OCS leases and require the Secretary of the Interior to consult with the Secretary of Commerce before holding an OCS lease sale (Section 206);
- direct a portion of OCS revenue into a new Ocean Resources Conservation and Assistance (ORCA) fund (Section 207);
- eliminate the use of categorical exclusions to approve exploration plans, extend the deadline for approving exploration plans, impose more robust requirement for drilling plans, provide for consultation with the Secretary of Commerce before approving exploration permits, and set forth more protective standards for drilling (Section 208);
- require the Secretary of the Interior to adhere to more protective substantive standards when developing five-year oil and gas leasing programs—including requirements to minimize environmental damage and consider three consecutive years of science—and to invite and consider comments from the Secretary of Commerce during the formulation of the plan (Section 209);
- direct the Secretary of the Interior to cooperate with the Secretary of Commerce to conduct studies of areas of the OCS open to leasing (Section 210);
- require more rigorous and more frequent inspections of drill rigs (Section 212); and
- require Development and Production Plans (DPP) for facilities in the Gulf of Mexico, provide for more robust DPPs, and prohibit the use of categorical exclusions for approving DPPs (Section 214);

C. Title VI: OCS Coordination and Planning

In addition to amending specific statutes like OCSLA to provide greater protection for ocean and coastal resources, we must also reform our overall approach to siting marine uses and managing our ocean. We need management approaches that integrate across federal and state jurisdictions and consider more holistically ecosystem services and the different uses that our oceans provide. The CLEAR Act begins to move in this direction with the changes in Title VI. As outlined in section III below, we recommend further strengthen this Title to truly provide for multi-objective planning; however, we support many of the concepts addressed in Title VI, including:

- increased coordination between state and federal agencies on decisions affecting ocean resources;
- comprehensive regional assessments of ocean ecosystems including important ecological areas, habitats, and species, as well as current and potential uses; and
- regional planning to proactively and transparently consider the tradeoffs made in allowing for ocean uses, while providing for the protection of marine ecosystem health.

In addition, we strongly support Section 605, which creates an Ocean Resources Conservation and Assistance (ORCA) fund. If oil companies are going to continue to make billions of dollars from activities that put ocean and coastal resources at risk, a portion of the revenue from those activities should be made permanently available for efforts to protect, maintain, and restore the health of ocean and coastal ecosystems. Coastal state and tribal governments play an important role in managing and protecting ocean and coastal resources. We support allocating a percentage of the ORCA funds to those governments, provided there is not a connection between the amount of funding received and proximity to oil and gas activities. The CLEAR Act avoids such a connection, thereby reducing the risk of providing further incentives for offshore drilling.

D. Title VII: Miscellaneous Provisions

Title VII of the Discussion Draft includes several important sections that should be carried forward. We particularly support the following Sections:

- Section 701, including its provisions to repeal incentives and royalty relief for deepwater drilling in the Gulf of Mexico and to repeal certain development and production incentives in Planning Areas offshore Alaska;

- Section 704, which precludes the Secretary of Commerce, the Administrator of NOAA, or Regional Fishery Management Councils from developing or approving fishery management plans or amendments that permit or regulate offshore aquaculture, and which invalidates any permit issued pursuant to this authority to conduct offshore aquaculture. We recommend adding language to clarifying that DOI also lacks authority to regulate offshore aquaculture, given MMS's previous interest in this issue. Because the Magnuson Stevens Fishery Conservation and Management Act does not provide the Secretary of Commerce with the authority to regulate offshore aquaculture, we support H.R. 4363, which establishes a national regulatory framework developed specifically to address the unique environmental concerns associated with offshore aquaculture;
- Section 705, which prevents exploration, development, or production of minerals of the Outer Continental Shelf in areas seaward or adjacent to areas where a state moratorium is in effect;
- Section 707, which would provide new authority for states to develop and revise plans for improved oil spill response under authorities of the Coastal Zone Management Act; and
- Section 708, which requires the President to promote collaboration among federal agencies with ocean and coastal related functions; support Regional Ocean Partnerships; and establish a National Ocean Council.

E. Title VIII: Gulf of Mexico Restoration

The *Deepwater Horizon* blowout and spill is a human and environmental tragedy. Coastal communities in the Gulf of Mexico—and coastal and marine ecosystems—are suffering and will continue to feel the effects of the spill for years to come. Effective restoration efforts will require the cooperation of and coordination among many federal, state, local and private interests over a sustained period. We support the effort to facilitate and coordinate restoration activities, including establishing a Gulf of Mexico Restoration Planning Program, establishing a long-term monitoring and research program in the region, and establishing a migratory species emergency habitat restoration and establishment program for the Gulf coast. As noted in Section III, below, the Committee should clarify how the provisions of Title VIII of the CLEAR Act will relate to processes mandated under existing law.

III. PROVISIONS THAT SHOULD BE STRENGTHENED OR ADDED TO THE CLEAR ACT TO ENSURE EFFECTIVE AND COMPREHENSIVE REFORM

While the CLEAR Act would enact many significant amendments, the Committee should consider clarifying or strengthening some portions of the draft bill to ensure that reforms are substantive and meaningful. The following section describes, in a general fashion, recommended changes to the Discussion Draft. We would welcome the opportunity to provide to the Committee specific legislative language, in the form of recommended line edits, for Title II, Subtitle A and Title VI of the Discussion Draft.

A. Title I: New Department of the Interior Agencies

Section 101(c)(3) of the Discussion Draft requires the Secretary of the Interior to create an independent office within the Bureau of Energy and Resource Management that would carry out environmental studies required under Section 20 of OCSLA and conduct environmental analyses for programs administered by the Bureau. The Discussion Draft requires this independent office, in carrying out its "studies," to consult with relevant federal agencies including the Bureau of Safety and Environmental Enforcement, the USFWS, the U.S. Geological Survey (USGS), and NOAA. The bill should be amended to clarify that the independent office is required to consult with these other agencies not only with respect to environmental studies pursuant to OCSLA section 20, but also with respect to the environmental analyses noted in Section 101(c)(3)(A)(iii)(II). In addition, the list of federal agencies with which the office shall consult should be expanded to include the Environmental Protection Agency (EPA) and the USCG.

Title I also requires the Secretary to create an audit and oversight program within the Office of Natural Resource Revenue, charged with overseeing the activities of the Office of Natural Resource Revenue (Section 103(d)). This auditing program may not be—or may not be perceived as—truly independent if it resides within the Office it is charged with overseeing. The Committee should change the Discussion Draft such that the independent auditing program is located in an office outside the Office of Natural Resource Revenue, for example in the Office of Inspector General.

Section 109 requires the establishment of an OCS Safety and Environmental Advisory Board, but provides little direction as to who may serve on the Board. Under the bill as drafted, it is possible that the Board could be dominated by members who

are part of, or have close ties to, the oil and gas industry. The bill should limit to the number of Board members who currently work for, or have in the recent past worked for, the oil and gas industry.

B. Title II: OCSLA Reform

The paragraphs below describe many recommended changes to Title II of the Clear Act and/or additional amendments to OCSLA, but do not set forth every recommended edit.

Section 203

Section 203 of the Discussion Draft does much to remedy flaws in the national OCS policy. However, the Committee should make additional changes to ensure that the policy is mandatory and consistent with the substantive protections included in the Act. For example, Section 203 of the bill should be revised to provide that the OCS "*shall*" be managed in a manner that "*minimizes*"—not just "recognizes"—the potential impacts of development. In amending OCSLA Section 2, paragraph 6, the bill should provide that "exploration, development, and production of energy and minerals on the outer Continental Shelf *shall* be allowed only when those activities can be accomplished in a manner that does not endanger life...." These additional changes will establish a strong and consistent policy.

Section 205

Section 205(a)(1) amends OCSLA to require the Secretary of the Interior to promulgate rules and regulations, but only when the Secretary determines those rules are "necessary and proper." This section should eliminate Secretarial discretion by striking the words "as he determines to be necessary and proper." With respect to OCSLA's language on lease cancellation, the draft bill should change the current standard in OCSLA Section 5(a)(2)(A)(i)—that continued activity "would probably cause serious harm"—to "could cause serious harm." The draft bill should amend current OCSLA Section 5(a)(8) to require regulatory provisions for the compliance with not only the Clean Air Act, but the Marine Mammal Protection Act (MMPA), the Endangered Species Act (ESA), the Clean Water Act (CWA), and the National Environmental Policy Act (NEPA). And in addition to requesting and giving "due consideration to the views of the Secretary of Commerce," the Section 205 should also require the Secretary of the Interior to request and give due consideration to USFWS, EPA, and the USCG.

Section 206

Section 206 of the CLEAR Act should include additional amendments to strengthen and clarify OCS leasing provisions. For example, it should amend Section 8(b)(4) to clarify that the rights of OCS lessees are conditional: they entitle the lessee to an exclusive right "*to seek authorization to*" explore, develop, and produce. Section 206 should require the Secretary of the Interior to request from the Secretary of Commerce a review of proposed lease sale environmental impact statements, not just a review of the lease sale itself. Also, the Secretary of Commerce should have more time to conduct this review, and Secretary of the Interior should be required to modify the proposed lease sale as recommended by the Secretary of Commerce's review. Section 206 should also be amended to include a new substantive standard to ensure that OCS leasing does not endanger marine life.

Section 208

This Section of the Discussion Draft makes significant improvements to OCSLA Section 11, but should go further to improve OCSLA's provisions relating to exploration. To begin, the bill should make additional amendments to subsection (a) of OCSLA Section 11 to prohibit duplicative geological or geophysical survey efforts in the same area of the OCS and to ensure the use of the best available technologies and practices to minimize impacts to aquatic life. As written, the Discussion Draft requires the Secretary to approve an exploration plan if, among other things, an operator meets a strict new spill response standard. This should be changed to require the Secretary to approve an exploration plan "*only*" if the operator meets the new response standard. OCSLA Section11(g) should be further amended such that the Secretary of the Interior is not only required to consult with the Secretary of Commerce, but also with other relevant natural resource and environmental agencies, including USFWS and EPA. The best available technology standard and technical systems analysis required by the proposed new OCSLA Section 11(j) should apply to OCS exploration plans that contain proposals to drill a well in frontier areas as

well as exploration plans that proposed to drill a well in deepwater areas. Finally, the language concerning disapproval of an exploration plan—the proposed new OCSLA Section 11(k)—sets too high a standard and should be modified.

Section 209

OCSLA Section 18 requires the Secretary of the Interior to prepare a five-year oil and gas leasing program. The Discussion Draft makes important changes to this section, but should further modify provisions concerning the five-year leasing program to ensure they include substantive protective standards. For example, the bill should provide a standard to ensure that only specific, limited areas are made available for leasing so that the leasing schedule is focuses on relevant areas of the OCS. It should also include a provision that requires the Secretary of the Interior to conform the five-year program to relevant marine spatial plans. It should exclude important ecological areas from the five-year leasing program. The bill should also require the Secretary of the Interior to consider, when preparing five-year leasing programs, the availability of infrastructure to support oil spill response. In addition to requiring the Secretary of the Interior to invite and consider suggestions from NOAA, the bill should require the Secretary to invite and consider suggestions from other natural resource and environmental agencies, including USFWS and EPA.

Section 210

Section 210 should further amend OCSLA Section 20 to require at least three years of baseline environmental data must be gathered before energy or mineral exploration or development activities are permitted. Baseline data should include (1) weather, water, wind, ocean chemistry, and other environmental data; (2) wildlife assessments, including but not limited to fish, birds, invertebrates, and marine mammals; and (3) data on the benthic environment.

Section 211

Section 211 strengthens the "best available and safest technologies" standard in OCSLA, but it does not go far enough; there are still exceptions and qualifiers that could reduce significantly the impact of this requirement. The bill should further amend OCSLA Section 21 to remove the exceptions and qualifiers and simply require OCS facilities to use the best available and safest technologies. Section 211 also requires the Secretary of the Interior to identify and publish a list of the best available technologies. The bill should require the Secretary to enter into an agreement with the National Academy of Engineering for periodic written review of the list, to make the written review public, and to report to Congress any disagreement with any findings or recommendations made in the review.

C. Title VI: OCS Coordination and Planning

As noted above, we support many of the concepts in Title VI related to regional coordination and planning. Our oceans urgently need a more integrated system with ecosystem based management at its core, as called for by both the Pew Ocean Commission and the U.S. Commission on Ocean Policy, and as advanced by the recent work of the President's Interagency Ocean Policy Task Force. As currently drafted, Title VI would make important advances in coordination and planning, but would also risk creating another single-sector approach to ocean management. We suggest broadening the objectives of Section 602 and 603 to address multiple objectives, of which energy planning would be one. Moreover, in order to provide for the "long-term economic and environmental benefit of the United States," the protection, maintenance, and restoration of marine ecosystem health, must be prioritized within the overall purpose statement.

Regional Assessments required by Section 603 will be critical in providing the science and data necessary for any multi-objective regional planning. As such, the bill should be amended to include additional requirements for robust environmental baseline data, as well as assessments of existing and emerging threats to marine ecosystem health, impacts of drilling, and effectiveness of clean-up technologies. It should also require identification and prioritization of additional science needs. Given the ocean science expertise within NOAA, these assessments should be conducted jointly by the Secretary of the Interior and the Secretary of Commerce.

In addition, we support finalization of the President's Interagency Ocean Policy Task Force work to establish a National Ocean Policy and Framework for Coastal and Marine Spatial Planning. The draft policy and framework have benefitted from significant agency, stakeholder, and public input. We suggest modifying Title VI to align with the proposed structures to avoid potentially overlapping and duplicative

planning processes. Our suggestions include modification of the geographic scope for assessments, plans, and regional bodies, and establishment of regional bodies by the President in consultation with the National Ocean Council, established in Section 708.

Section 605 creates the ORCA fund to be administered by the Secretary of Commerce for the conservation, protection, maintenance, and restoration of ocean, coastal and Great Lakes ecosystems. Thirty-five percent of the funding would be made available through a competitive grants program. To enhance federal agency communication and coordination we suggest that the National Ocean Council, established in section 708, approve the final selection of the Ocean, Coastal, and Great Lakes competitive grant proposals, based on the recommendations of the Secretary of Commerce. With this approval process, review by a statutorily mandated Review Panel, as provided for in Section 605(c)(2), is unnecessary. Instead, Congress should direct the Secretary of Commerce to establish procedures and criteria for evaluating grant proposals that include appropriate broad, interdisciplinary review.

Under Section 605, Regional Ocean Partnerships would be eligible for ten percent of the ORCA funding. We suggest modifications to the definition of Regional Ocean Partnership in Section 3 in order to ensure that the regional bodies established pursuant to Section 602 are also eligible for this funding.

D. Title VII: Miscellaneous Provisions

Section 702 requires the Secretary of the Interior to issue regulations establishing a "production incentive fee" on oil or gas wells producing in commercial quantities. The fee is set at $2 per barrel of oil and 20 cents per million BTU of natural gas. The draft bill should clarify whether the monies collected pursuant to this section will be deposited into the General Treasury or used for some specific purpose.

Section 710 provides that funds made available pursuant to the CLEAR Act cannot be used to fund or carry out activities for which a responsible party (as defined by the Oil Pollution Act (OPA)) is liable. This section should be modified to allow CLEAR Act funds to be used, but to require that responsible parties remain liable and must reimburse any expenditures.

E. Title VIII: Gulf of Mexico Restoration

Sections 801 and 802 establish a Gulf of Mexico Restoration Program and a Gulf of Mexico Long-Term Environmental Monitoring and Research Program. The activities to be undertaken pursuant to these programs appear to overlap significantly with processes that OPA requires federal and state natural resources trustees to undertake. For example, Section 801(c), which calls for a restoration plan, appears to overlap significantly with OPA's requirement that trustees develop and implement "a plan for the restoration...of the natural resources under their trusteeship." 33 USC. § 2706(b).

The Committee should clarify the relationship between the requirements of Title VIII and the requirements of OPA, including OPA regulations and NOAA Natural Resource Damages Assessment (NRDA) guidance. If the Restoration Plan and/or Monitoring and Research Program requirements set forth in Sections 801 and 802 are intended to establish or replace requirements for a NRDA process, the draft should make that clear, and should provide more detailed legislative language. Sections 801 and 802 should also provide for more opportunities for public participation in the Restoration and Monitoring programs.

Section 801(d)(2)'s definition of restoration programs and projects should be changed to add the word *"enhancement"* after the word "replacement." In Section 802(b), the bill should be amended to require that the research and monitoring program address not only physical, chemical, and biological characteristics, but also *"ecological"* characteristics.

IV. CONCLUSION

The CLEAR Act makes significant strides in addressing a host of shortcomings in the administration of oil and gas activities on the OCS and in other areas of law and policy. Additional targeted improvements would maximize the effectiveness of these reforms. I look forward to working with the Committee as the CLEAR Act moves forward in the legislative process. The need for action is urgent and I commend you again for moving forward with reform legislation. Thank you again for this opportunity to testify.

Ms. BORDALLO. I thank you very much for your testimony, Ms. Jones, and now I would like to recognize Dr. Dismukes.

STATEMENT OF DR. DAVID E. DISMUKES, ASSOCIATE EXECUTIVE DIRECTOR AND DIRECTOR OF POLICY ANALYSIS, CENTER FOR ENERGY STUDIES, LOUISIANA STATE UNIVERSITY

Dr. DISMUKES. Thank you. Good afternoon, Madam Chairperson and Committee members. It is an honor to be here this afternoon.

My name is David Dismukes. I am a Professor and the Associate Executive Director for the Center for Energy Studies at the Louisiana State University.

The Center for Energy Studies was created by the Louisiana Legislature in 1982, and our purpose is to examine energy-related research that impacts our citizens, our environment, and our economy.

There are a number of positive provisions that are included in the bill before you this afternoon that I think will go a long way in helping improve offshore energy regulation. Some of those include the break up of the Minerals Management Service into separate regulatory and governance structures that will look at planning and at revenue collection and enforcement separately.

Some of the other positive aspects of the bill include the professional resources that will be dedicated to the Minerals Management Service—I mean, to the successor agencies and the ability to go in and seek out the best talent to go in and examine pressing issues in energy regulation as well as in safety and environmental performance. The increased standards associated with reporting are also going to be, I think, a positive aspect associated with improved regulation for the offshore areas, as well as the benchmarks that were talked about at length earlier in the hearing that I think create a unique opportunity in offshore regulation on a foregoing basis.

I think Congress is missing an opportunity there though without changing those and maybe enhancing those a little bit by setting rewards and penalties to meeting those benchmark targets. By giving profit incentives for performing in best of class or exceeding those classes and by invoking symmetrical penalties for not meeting those standards I think you will go a long way in encouraging the types of research and development that you are thinking about in this particular provision of this legislation for mitigating spills and improving technology in oil and gas activities.

However, despite a lot of those good provisions that are in the bill there are a number of deficiencies, particularly as they relate to Louisiana. The first and one of the most important ones have to do with the provisions that would remove the current incentive programs for deep gas drilling in the shallow waters of the Gulf of Mexico, as well as provisions that would remove the incentive program for the deepwater Gulf of Mexico itself. Those provisions are essentially job killers for a lot of people along the Gulf of Mexico.

There are 250,000 people in the Gulf states that make their living just directly in either exploration, production, or services for the oil and gas business along the Gulf states. There are 100,000 of those that live and work in the coastal counties and parishes of the Gulf of Mexico alone, and many of those are engaged in these deepwater activities as well as some of these emerging activities with deep gas. Removing those incentives will make the Gulf a

much less attractive place than it has been over the last 10 to 15 years, and will discourage job creation in that area.

Another deficiency that is in the bill is an opportunity to address a longstanding inequity associated with the mineral revenue process between the states and the Federal Government, and that is the opportunities of sharing revenues with the coastal states that are impacted by these activities. The provisions that are in this bill that would share 10 percent among a wide range of coastal states regardless of their participation in energy production right now is one that is somewhat difficult. Louisiana as well as the other coastal states have made big contributions in terms of supporting existing as well as current and future energy production, and certainly accelerating those energy revenue-sharing provisions that were in earlier legislation is an opportunity that could be included in this bill as well.

I want to thank you for the opportunity of speaking before you this afternoon, and look forward to the questions that you may have.

[The prepared statement of Dr. Dismukes follows:]

Statement of David E. Dismukes, Ph.D., Professor, Associate Executive Director, and Director of Policy Analysis, Center for Energy Studies, Louisiana State University

Chairman Rahall, Ranking Member Hastings, and Committee members, thank you for the opportunity to appear before this Committee to share my opinions on the proposed Consolidated Land, Energy, and Aquatic Resources Act ("CLEAR") that is the subject of today's hearing.

My name is David E. Dismukes and I am a Professor and Associate Executive Director for the Center for Energy Studies at the Louisiana State University in Baton Rouge, Louisiana. The Center for Energy Studies is a state-funded research institute that was created by the Louisiana Legislature in 1982 to examine energy-related issues impacting our economy, citizenry, and environment.

The Center takes a multidisciplinary approach to examining or supporting a wide range of energy-related research. For the past 15 years, one area of concentration has been issues associated with offshore oil and gas exploration and production, much of which has been done on the behalf of the Minerals Management Service ("MMS").

The proposed CLEAR Act that is the subject of today's hearing is certainly an ambitious piece of legislation designed to change offshore energy regulatory policies in the aftermath of the *Deepwater Horizon* accident. The Bill includes a number of positive provisions. For instance, Sections 101 to 103, and Section 107, collectively, would allocate the planning, leasing, and inspection functions of the former Minerals Management Service into three new bureaus. This separation should help instill greater confidence in each bureau's independence and remove the conflicts of interest that were perceived to be inherent within the old MMS regulatory and governance structure.

Another important regulatory provision included in the Bill is the framework for buttressing each of these new regulatory agencies' professional staff, allowing them to recruit and retain the best available talent in the market within specialized skill areas.

An additionally important provision included within this legislation is the establishment of benchmarks and performance metrics that evaluate operator success at meeting expected environmental and safety standards. However, in developing these provisions, Congress may be missing a unique opportunity to create a performance-based regulatory structure that establishes a symmetrical system of penalties and rewards that can lead to both improved offshore environmental and safety outcomes, and private sector research in technologies that will lead to both profitable and environmentally positive outcomes.

While the bill includes a number of positive provisions, it includes several important deficiencies. I would like to focus on the two most important deficiencies from Louisiana's perspective. The first deficiency in the bill is that it would remove the offshore GOM deep gas drilling and deepwater drilling incentives. These provisions

are simply job killers for a large number of oil and gas employees along the GOM. Today, there are more than 250,000 people directly employed in oil and gas related activities along the GOM states, more than 100,000 of whom live and work along the coastal parishes and counties of the Gulf alone. The Deepwater Royalty Relief Act of 1995 is widely credited along the GOM as re-invigorating the Gulf as a viable producing basin after a long period of dormancy.

This deepwater activity will be significantly reduced, if not potentially lost, if these incentives are removed. It would be a fallacy to assume that this deepwater activity could simply be made up from increased conventional exploration and production opportunities in shallow water or on the shelf. The shallow-water GOM is a relatively mature basin that has seen significant production declines in both crude and natural gas over the last decade. The only recent opportunities for new and expanded shallow water activity were the deep-drilling gas opportunities facilitated by the Energy Policy Act of 2005. Unfortunately, the proposed bill under consideration today would eliminate even those emerging opportunities and shut down tens of thousands of jobs for Louisiana oil and gas workers, as well as all of the additional small businesses that are located along the coast, and rely on these offshore activities for their livelihood.

In addition to being job killers, these two provisions would also challenge our national energy security as the GOM accounts for 30 percent of all domestic crude oil production, and prior to Hurricane Katrina, the region accounted for more than 25 percent of all domestic natural gas production. There are roughly 120 active deepwater wells in the GOM that account for 21 percent of all domestic crude oil supplies. Removing deepwater incentives would erode this 21 percent contribution quickly, resulting in significant impacts on our imports of foreign sources of oil, our trade deficit, and our budget deficit.

The second deficiency in this bill is its failure to address a long-standing inequity in the mineral revenue process. Louisiana and other GOM states have supplied the U.S. with a significant share of its energy production, transportation, and refining capacity for more than a century, and have supported offshore oil and gas activities for more than 50 years. Yet despite this contribution, the GOM states have received few to no bonuses, rentals, or royalties created by the production just off our shorelines.

Instead of remedying this inequity, the proposed bill would allocate 10 percent of the annual federal mineral revenue from offshore production into a number of competitive grant programs that would be available to all coastal states regardless of their historic or current energy production contributions. Congress should use this opportunity to create a permanent remedy to this inequity by including revenue sharing provisions for those states that are actively supporting offshore energy production activities regardless of whether they are fossil fuel or renewable based.

I thank you for the opportunity to appear before your Committee to speak about these timely and important energy regulation issues.

Ms. BORDALLO. Thank you very much, Dr. Dismukes, and now we will go forward with questions. First, I ask unanimous consent to submit for the record statements by Kevin Costner, the Pew Environment Group, and the Nature Conservancy. Hearing no objection from the Committee, so ordered.

[A statement submitted for the record by Kevin Costner, Founder, CINC, follows:]

Statement submitted for the record by Kevin Costner, Founder, CINC, and Co-Founder/Partner, Ocean Therapy Solutions, WestPac Resources
Link to video demonstration of CINC technology: *www.ots.org*

Mr. Chairman, Members of the Committee thank you for inviting me to testify before your legislative hearing on this important piece of legislation. As you know, for personal reasons, I am unable to appear before you, but instead am submitting written testimony for the record. I am grateful for this opportunity.

For the past seventeen years, I have invested in and commercially adapted a transfer of technology from the Department of Energy at Costner Industries Nevada Corporation (CINC). At CINC we manufactured a rugged, robust, portable and commercially viable centrifugal force machine that can separate large volumes of water from oil. We developed five different sizes with the largest able to handle up to 200 gallons per minute in a variety of adverse conditions and able to separate various

viscosities with both oil and water outputs 99.9% pure. Simply put, this is the "best available technology" at this time for cleaning up any size oil spill. This was all accomplished with over $20 million of my own money.

This machine has had a life of its own. I've been along for the ride, from dreaming about the possibility, to engineering success, to disbelief and frustration when I was met with an apathetic response, right up to this moment. I am proud that this technology can now be part of the immediate solution to remediation in the Gulf, though I am disappointed with the events, which ultimately shed light on its capabilities.

In the last two weeks I made two trips to DC, to testify before Congress. I was asked to explain how or why this 21st century technology, which is unparalleled in its efficiency for separating oil and water, has sat idly on the shelves while we continued to use booms and skimmers to rake oil pollution across our precious oceans, lakes and rivers. Of course spills continued after the Exxon Valdez, despite industry rhetoric, and of course they will continue long after the world has moved its attention off this most recent tragedy in the Gulf. In my testimony I have been consistent in asking for mandated safety protocols, not just on oil rigs, but anywhere oil has the potential to meet water, be it salt or fresh, bays, lakes or smaller streams and tributaries. And I will continue to work to see that this machine was used as I intended it to be—as a first and most efficient responder to mitigate oil spills of any size around the world.

I believe this Committee's bill begins to address the critical need for escalated oil spill response capabilities in this country.

Long term needs

Shortly after the Deepwater Horizon rig exploded and sank, I formed Ocean Therapy Solutions (OTS) with a renewed intention to put my machines to work, to give the people of the Gulf a chance to fight back, to give the Gulf and everything in it's ecosystem a shield of protection.

As has been announced, OTS is deploying 32 machines to the Gulf in partnership with BP to address the immediate Deepwater Horizon catastrophe. (Ten will be operational in the Gulf by July 5, and the remaining 22 by August 20.) Equally important is BP's commitment to a continued partnership with OTS and their desire to ensure a legitimate response capability in the future. BP COO Doug Suttles said of our machine: "This is real technology with real science behind it, and it passed all of those tests" in reference to a series of rigorous tests BP put our machine through in difficult environments. If Doug is right, CINC will lead as I intended it to, and change the way we think about 21st century oil spill response.

Achievable response plans

The establishment of the Bureau of Safety and Environmental Enforcement within the Mineral Management Service (MMS) is a critical first step in ensuring thorough and consistent monitoring within the oil industry. The establishment of an independent Training Academy takes us one step further by ensuring we have well-trained safety officers to keep the best interests of the nation in mind as they enforce compliance.

I support the redundancies and overall emphasis placed on safety in the Committee's Bill H.R. 3534. This is a major step forward in dealing with the country's painfully obvious outdated oil spill safety systems and a nod to the classic logic of—one can never be too safe. There are multiple references in the bill that would require drilling plans to have "the capabilities and technology to respond immediately and effectively to a worst-case oil spill in real-world conditions in the area of the proposed activity." I would add that these plans need to establish a dual framework to include both A) first response capabilities; and B) long term recovery and environmental monitoring.

As we move forward, our response plans need to reflect realistically the best available technology and be individually tailored for each particular oil or mineral recovery program. They cannot be plagiarized of thoughtlessly reproduced. It is true what out mothers said, that trying to cut corners, never saves you any time in the end.

Some people thought we wouldn't see another big spill after the Exxon Valdez. Unfortunately we are facing 60,000 barrels of oil gushing into the Gulf every day, with no end in sight and no greater clean up capabilities than we had during the Exxon Valdez. So how did we get here? And how is it that we haven't spent the last twenty years preparing for another spill?

The plans that got us here, that claimed they could clean up 250,000 gallons a day, that were rubber-stamped by the MMS can no longer be tolerated. Hypothetical projections of an industry's response capabilities are no longer good enough. Not after what we've seen in the Gulf. We need proven technologies and an institutional support structure to foster the growth of improved technologies into the future.

Elevate and invest in clean spill technology

I for one support and believe this bill closes a critical loophole, in that it will require the Secretary of Interior to publish a list of "best available technologies for. . .oil spill response" within six months of passage. As you know I battled to get CINC technology before virtually every major U.S. oil company and every government agency involved in regulating the oil industry. It took this catastrophe to get their attention focused on the incredible output of this technology.

I hope that by establishing the "Offshore Technology Research and Risk Assessment Program," a third party verification for all safety related equipment, new technology will have the chance to be tested and ready for deployment before spills occur. A published list of these technologies should create transparency within the system and allow those technologies that should be included a way forward within the industry. Indeed the hope is for a combined analysis of industry trends, and the reviews of best available technologies to guide federal research dollars toward the develop 22nd Century oil spill technology.

I would ask in this vein, not as a guy hawking his product, but as a citizen, an ocean lover and coastal resident that we also choose to emphasize and advance *clean* oil spill technologies. We can do better than we are right now, using technologies that pollute to clean up pollution. We need to think bigger and dream more ambitiously about where technology can take us. We need to actually move beyond booms and skimmers, which have been our first line of defense against oil spills for the last hundred years.

I've thought that way and continue to think that way as I evolve in this space, footing the bill to push the envelope of progress. It took only three years of heavy research and development to move the centrifuge patent I purchased from the Department of Energy from a six-inch device for separating metals, to a rugged, portable, eight-foot tall machine that could separate 200 gallons of water and oil every minute. Today it is evident that this technology has eclipsed all other current oil spill technology, and we've been here for over a decade. The bar can and should be raised now.

Additionally, my company has begun an exciting collaboration with Edison Choest, the largest oil servicer in the Gulf. We are in the final stages of designing and engineering emergency response ships that would be staged strategically throughout the Gulf. These "fire truck" vessels would be able to be onsite within two hours of an oil spill incident. This collaboration could fundamentally change the world's approach to oil spill recovery. We won't stop there.

If we have the intellect and technology to dig down thousands of feet into the earth's core, I believe we have the intellect and the technology to hunt down underwater oil plumes, to engage and grapple with oil out on the blue water, before it ever has a chance to hit our shores. We will continue to get better and expand our capabilities so that when the next spill happens, even fishermen have small-scale centrifuges on board and ordinary citizens become the cavalry, running defense against spills to protect their own communities. Any authorized Research & Development (R&D) program must be funded to its maximum to ensure the United States can contribute to the solution if we are indeed the ones creating the problem.

Investing in American solutions

As a business owner with a manufacturing plant in Carson City, Nevada I appreciate the "buy and build America" provision in this bill. I agree that we need to recapture our manufacturing base in this country. As I have demonstrated, we can accomplish great things if there is a strengthened collaboration between the private sector and technologies developed and patented by the Federal laboratories.

CINC has bridged the gap for oil response up to this point, but we need to start thinking now about the 22nd Century. We need an R&D plan for environmental technologies that can match our hunger for growth and natural resources as our society continues to mature. Coupled with the advancement of research and investment in new technologies this new "buy and build America" provision, can put America back to work and make us a leader in oil spill prevention and response. I believe this section is a step in the right direction.

Conclusion

Everyone is now well aware of the fact that both the oil industry and the federal government hampered a more robust research and development program by significantly underfunding research and development programs. This bill, if passed, will do a great deal to change that. But this disaster has also shown that our response system needs to be flexible in times of emergency to deploy proven technologies. The American people need to be able to count on someone of authority to make those

decisions, in that moment, when their safety and the health of environment are at stake.

I believe there is good will in the Congress to change this. It is my hope that this bill will bring safety and openness in this system.

Thank you.

[A letter submitted for the record by Karen Steuer, Director, Government Relations, Pew Environment Group, follows:]

June 29, 2010

The Honorable Nick J. Rahall II
Chairman
Committee on Natural Resources
1324 Longworth House Office Building
United States House of Representatives
Washington, DC 20510

Dear Chairman Rahall:

On behalf of The Pew Environment Group, I am writing to commend you for your leadership in developing a legislative proposal to address the systemic fiscal and environmental problems that have afflicted the Department of the Interior offshore oil and gas program for many years. Please include this letter supporting your *"Discussion Draft, Amendment in the Nature of a Substitute to H.R. 3534 dated June 22, 2010"* into the Committee on Natural Resources' June 30, 2010 hearing record.

Congress has not enacted significant amendments to the Outer Continental Shelf Lands Act (OCSLA) since 1978. In the 32 intervening years, advancements in technology have allowed extraction of oil and gas from ever-deeper waters and in new areas, but the regulation and environmental review of all OCS drilling operations has not kept pace. Clearly the technology for extraction has far outstripped responsible Outer Continental Shelf (OCS) planning and the capacity and quality of oil spill prevention and response capabilities. The tragedy of the ongoing Gulf oil spill disaster reminds us of the paramount importance of allowing offshore oil and gas development to occur only in appropriate places, and only if there are effective policies and practices in place to assure the safety of workers and protection of the environment.

The *Discussion Draft* contains a number of vital reforms of the Outer Continental Shelf oil and gas program. We are especially supportive of the provisions in Title II that:

- remedy flaws in the national OCS policy (Section 203);
- require the Secretary of the Interior to promulgate new, more protective regulations and in so doing, to consider the views of the Secretary of Commerce on matters that may affect the marine and coastal environment (Section 205);
- change the leasing provisions of OCSLA to disqualify parties not in compliance with certain safety or environmental requirements from bidding on OCS leases and require the Secretary of the Interior to consult with the Secretary of Commerce before holding an OCS lease sale (Section 206);
- direct a portion of OCS revenue into a new Ocean Resources Conservation and Assistance (ORCA) fund (Section 207);
- eliminate the use of categorical exclusions to approve exploration plans, extend the deadline for approving exploration plans, impose more robust requirement for drilling plans, provide for consultation with the Secretary of Commerce before approving exploration permits, and set forth more protective standards for drilling (Section 208);
- require the Secretary of the Interior to adhere to more protective substantive standards when developing five-year oil and gas leasing programs—including requirements to minimize environmental damage and consider three consecutive years of science—and to invite and consider comments from the Secretary of Commerce during the formulation of the plan (Section 209);
- direct the Secretary of the Interior to cooperate with the Secretary of Commerce to conduct studies of areas of the OCS open to leasing (Section 210);
- require more rigorous and more frequent inspections of drill rigs (Section 212); and
- require Development and Production Plans (DPP) for facilities in the Gulf of Mexico, provide for more robust DPPs, and prohibit the use of categorical exclusions for approving DPPs (Section 214);

Title II does much to remedy the flaws in OCSLA and we look forward to working with the Committee to strengthen additional provisions of the *Discussion Draft* to

ensure the reforms are substantive and meaningful. These provisions include but are not limited to the following:

- We recommend Section 203 be revised to provide that the OCS "*shall*" be managed in a manner that "*minimizes*"—not just "recognizes"—the potential impacts of development.
- To strengthen OCS leasing standards, we recommend Section 206 clarify that the lessee is only entitled to an exclusive right "*to seek authorization to*" explore, develop, and produce. Section 206 should require the Secretary of the Interior to request from the Secretary of Commerce a review of the proposed lease sale environmental impact statement, not just a review of the lease sale itself. The Secretary of Commerce should have more than 30 days to conduct this review.
- As written, Section of 208 requires the Secretary to approve an exploration plan if, among other things, an operator meets a strict new spill response standard. We recommend this be changed to require the Secretary approve an exploration plan "*only*" if the operator meets the new response standard. The best available technology standard and technical systems analysis required by the proposed new OCSLA Section 11(j) should apply to OCS exploration plans that contain proposals to drill a well in frontier areas as well as exploration plans that propose to drill a well in deepwater areas.
- We recommend Section 209 provide a standard to ensure that only specific, limited areas are made available for leasing in the five-year program to help focus the leasing schedule. Section 209 should require the Secretary of the Interior to consider, when preparing five-year leasing programs, the availability of infrastructure to support oil spill response and important ecological areas.

We applaud the Committee's effort to begin to address the difficult challenge of broader ocean management with the changes included in Title VI, specifically:

- increased coordination between state and federal agencies on decisions affecting ocean resources;
- comprehensive regional assessments of ocean ecosystems including important ecological areas, habitats, and species, as well as current and potential uses;
- regional planning to proactively and transparently consider the tradeoffs made in allowing for ocean uses, while providing for the protection of marine ecosystem health; and
- creation of an Ocean Resources Conservation and Assistance (ORCA) fund.

In addition, we anticipate and support finalization of the President's Interagency Ocean Policy Task Force work to establish a National Ocean Policy and Framework for Coastal and Marine Spatial Planning. This would create a regional planning process for ocean management and has benefitted from significant agency, stakeholder, and public input. We suggest modifying Title VI to better coordinate with the structure for that work so as to avoid overlapping and duplicative planning processes.

We are supportive of provisions in Title VII that:

- repeal incentives and royalty relief for deepwater drilling in the Gulf of Mexico and to repeal certain development and production incentives in Planning Areas offshore Alaska (Section 701);
- preclude the Secretary of Commerce, the Administrator of NOAA, or Regional Fishery Management Councils from developing or approving fishery management plans or amendments that permit or regulate offshore aquaculture, and which invalidate any permit issued pursuant to this authority to conduct offshore aquaculture (Section 704);
- prevent exploration, development, or production of minerals of the Outer Continental Shelf in areas seaward or adjacent to areas where a state moratorium is in effect (Section 705);
- provide new authority for states to develop and revise plans for improved oil spill response under authorities of the Coastal Zone Management Act (Section 707); and
- require the President to promote collaboration among federal agencies with ocean and coastal related functions; support Regional Ocean Partnerships; and establish a National Ocean Council (Section 708).

Finally, with respect to Title VIII, we support the effort to facilitate and coordinate restoration activities, including establishing a Gulf of Mexico Restoration Planning Program, establishing a long-term monitoring and research program in the region, and establishing a migratory species emergency habitat restoration and establishment program for the Gulf coast.

In conclusion, we appreciate your leadership in taking on the daunting task of reforming the federal government's offshore energy programs, both in terms of your proposals to assure a fair return to taxpayers for use of their assets by the oil and

gas industry, and your commitment to protecting the environment from irresponsible practices. We look forward to working with your Committee in moving these reforms forward.

Sincerely,

Karen Steuer
Director, Government Relations
Pew Environment Group
(202) 491–4535

CC: Members, Committee on Natural Resources

Statement submitted for the record by Robert Bendick on Behalf of The Nature Conservancy

Mr. Chairman and members of the Committee, I appreciate this opportunity to present The Nature Conservancy's recommendations for H.R. 3534. My name is Robert L. Bendick, Jr. and I am the Director of U.S. Government Relations at the Conservancy.

Introduction

The Nature Conservancy is an international, non-profit conservation organization working around the world to protect ecologically important lands and waters for nature and people. Our mission is to preserve the plants, animals and natural communities that represent the diversity of life on Earth by protecting the lands and waters they need to survive. We are best known for our science-based, collaborative approach to developing creative solutions to conservation challenges. Our on-the-ground conservation work is carried out in all 50 states and more than 30 foreign countries and is supported by approximately one million individual members. We have helped conserve nearly 15 million acres of land in the United States and Canada and more than 102 million acres with local partner organizations globally.

We commend Chairman Rahall and the Committee for creating such a comprehensive bill. Taken together, its provisions can play a critical role in the conservation of America's watersheds, natural areas and marine ecosystems for their many long-term benefits to our society.

We believe this is an extremely important piece of legislation for the future of America's lands and waters. The catastrophic Deepwater Horizon Oil Spill in the Gulf of Mexico has made the need for passage of this bill more urgent than ever and further demonstrates the importance of a comprehensive approach to energy production and to addressing the long term and immediate impacts of such production.

Our testimony covers most sections of the bill because, as the bill and circumstances have changed since its initial introduction, we find that much of this legislation is important to the Conservancy's mission. Thus we respectfully provide comments on the following sections:

- Title II—Federal Oil and Gas Development
- Title IV—Full Funding for the Land and Water Conservation and Historic Preservation Funds
- Title V—Alternate Energy Development
- Title VI—Outer Continental Shelf Coordination and Planning
- Title VIII—Gulf of Mexico Restoration

We are also prepared to provide legislative language very quickly for any of these sections where you feel that would be useful.

Title II—Federal Oil and Gas Development

The Conservancy commends the Committee for the very comprehensive reforms to the Outer Continental Shelf (OCS) leasing process that are contained in title II of the draft bill. We believe that these amendments would fundamentally restructure the Outer Continental Shelf Lands Act (OCSLA) so that it can serve as a safety and environmental statute that will better protect the coastal resources that Americans treasure.

Following are the principles that the Conservancy would suggest to reform the OCS leasing programs, principles that we find well-reflected in the provisions of the draft bill.

The current OCSLA was written to encourage the development of energy and mineral resources on the OCS. Under OCSLA, the Department of Interior is to balance the need for energy development with possible harm to coastal and marine biodiversity and habitats. In trying to reach this balance, the Department of Interior accept-

ed risks that led to the Deepwater Horizon Oil Spill. OCSLA should be amended so that energy and mineral development only occurs if it will not harm coastal and marine environments. OCSLA must include clear standards for safety and environmental protection.

Under OCSLA there are four steps in the Government's oil and gas decision-making process: 1) the Department develops a five-year leasing plan for the entire OCS; 2) it conducts specific lease sales; 3) it approves exploration plans submitted by companies holding leases; and 4) it approves permits for production wells. Several reforms are needed in this four-step process:

- Up-to-date baseline data on the physical and biodiversity characteristics of each OCS area must be in hand before the area can be considered for the leasing program.
- Environmental assessments under NEPA for the leasing plan and individual lease sales must have concurrence from NOAA and must respond to comments from other federal and state environmental agencies.
- Lease sale areas must be drawn more tightly and be amenable to complete analysis so that potential environmental impacts can be fully assessed.
- OCSLA should specify the minimum information requirements for exploration plans including information about the specific technology that will be used to assure safety and respond to accidents.
- The Department must have sufficient time (at least 90 days with extensions if necessary) to fully review exploration plans.
- No part of the decision-making process should be exempted from appropriate environmental reviews under categorical exclusions from NEPA requirements.

Adequate resources have not been available to carry out inspections of offshore exploration and production facilities in the Gulf of Mexico region. OCSLA should be amended to require a schedule of inspections for each type of facility including monthly inspections for drilling rigs. Inspectors should be thoroughly trained. Fees from producers should be required at the time that exploration plans and development applications are submitted to cover the cost of inspections and training. The inspection and safety branch of the Department should be subject to very tight ethics standards that do not allow employment in the oil and gas industry for five years after any inspector leaves the inspection agency.

OCSLA should be amended to encourage the development and use of better technology for safety and spill prevention on facilities operating on the OCS. The Department of Energy should be directed to establish a technology development program and maintain a clearinghouse for technology information. OCSLA should require the use of best available safety and prevention technologies for activities in high risk areas (e.g., deepwater, locations with significant currents, and remote locations).

OCSLA should be amended to provide that beginning within three years, particular dispersants may not be used (or may not be used for specific purposes or in large quantities) unless specifically permitted for that use by the Environmental Protection Agency.

The "mitigation hierarchy" should be fully applied to energy and mineral activities on the OCS. Exploration or production that may adversely affect areas of high biodiversity value on the OCS or on, or adjacent to, other coastal waters (as determined by NOAA and FWS) must be avoided. Exploration and production plans must be carried out to minimize impacts in other areas. Any impacts to biodiversity or habitat that do occur must be fully offset. Similar requirements are included in the onshore oil and gas and alternative energy sections of the bill and would also serve an important purpose here.

It is evident that the response plan prepared by BP for the Deepwater Horizon drilling platform was wholly inadequate. OCSLA and the Oil Pollution Act should be amended to provide that exploration plans may only be approved if they are accompanied by response plans that detail response capacity (oil recovery including vessels, booms, relief well plans and equipment; and wildlife protection measures) to respond to the worst case release in the specific area where the exploration plan is to be carried out.

The liability limits for damages should be increased to reflect the availability of private insurance in the marketplace for smaller companies and be lifted altogether for large oil and gas companies with self-insurance capability. The Oil Spill Liability Trust Fund should be increased in size and amended to facilitate government response to large spills when responsible parties do not have the capability.

In addition to these principles, as discussed below, the Conservancy also urges that OCS leasing be conducted in accordance with comprehensive regional marine plans that integrate all ocean uses to achieve the maximum benefit for the American people.

Title IV—Full Funding for the Land and Water Conservation and Historic Preservation Funds

The Nature Conservancy strongly and enthusiastically supports Chairman Rahall's commitment to fully fund the Land and Water Conservation Fund (LWCF). This is the most significant proposal to invest in federal land protection in nearly a decade and can be an important step to a comprehensive program to conserve by various means America's most significant watersheds, ecosystems and metropolitan greenways.

More specifically, Title IV of H.R. 3534 would provide full, permanent and dedicated funding for the LWCF, the principal source of land acquisition funding for the National Park Service, U.S. Fish and Wild Service, Bureau of Land Management and the U.S. Forest Service. Such an action would accelerate the fulfillment of the President's promise to fully fund LWCF by FY 2014. It would also provide core funding to realize the America's Great Outdoors Initiative that has been advanced by the Obama Administration including funding for the conservation of working landscapes through conservation easements and support for increasing access by hunters and anglers to public lands.

The Committee's Discussion Draft would modify H.R. 3534 by substituting language more closely tracking S. 2747, the Land and Water Reauthorization and Funding Act introduced by Senators Bingaman and Baucus. Rather than amending the LWCF by mandating a particular formula for the federal and state-side programs of LWCF, the Discussion Draft would allocate $900 million to the purposes of LWCF. Such an approach would continue to provide discretion to the Administration and Congress to allocate particular funding levels to the federal and state-side programs, plus two competitive matching grant programs that fund land acquisition by states and counties—the Forest Legacy and Cooperative Endangered Species Conservation Fund, both of which are now funded through LWCF. Enhanced and dedicated funding for states to match their own ongoing conservation funding initiatives would allow the states to play an even more significant role in protecting natural areas for their multiple benefits and in providing places for outdoor recreation for America's families.

The U.S. has been a leader in conservation for well over a century. Even during the struggles of the Civil War, President Lincoln provided protection for Yosemite Valley. In 1872, the Congress set aside Yellowstone National Park as the world's first national park. And at the turn of the last century, President Theodore Roosevelt created numerous National Monuments, National Forests and the first national wildlife refuge.

In 1965, responding to a commission created by President Eisenhower and legislation proposed by President Kennedy, Congress created the Land and Water Conservation Fund to provide a reliable source of funding to conserve landscapes throughout the nation. Since then, it has been the source of funding for numerous federal protected areas, including West Virginia's Monongahela National Forest and Canaan Valley National Wildlife Refuge, Washington's North Cascades National Park, Colorado's Great Sand Dunes National Park, Montana's Rocky Mount Front Conservation Area, Florida's Everglades National Park, the Appalachian National Scenic Trail and a host of other irreplaceable components of our natural heritage.

We are, today, faced with unprecedented threats to the integrity of natural, recreational, scenic, and cultural resources and the long-term conservation of our nation's lands and waters. From our nation's cities and metropolitan areas to remote backcountry locations, Americans depend on natural areas, working landscapes and cultural sites in fundamental and diverse ways. Accelerating climate change, continuing population growth, development and other land-use pressures, alternative and traditional energy production, constrained federal and state budgets, and the increasing separation of young people from experiences with nature all demand rapid action if our most important lands and waters are to be protected.

The need to invest in land conservation is well appreciated by voters throughout the nation. In November, 2008, nearly three-fourths of state and local ballot measures for new land and water funding were approved, authorizing $8.4 billion in new land and water conservation investments. Yet, there continue to be unmet conservation needs in federal conservation areas and in many of our states.

Recent public opinion polling demonstrates strong voter support for continued funding of the LWCF, particularly in light of the recent Gulf oil spill. For example, when asked whether some of the funds from offshore drilling fees should continue to go to the LWCF, an overwhelming majority of voters—86 percent—are sup-

portive. And 77% of voters favor dedicating at least $900 million annually to the LWCF. [1]

There is a national need for expanded and new land and water programs to conserve the network of natural lands and waters, recreational open spaces, working landscapes, urban and metropolitan parks, and cultural and historic sites that:

- Provide a foundation for our economy through sustainable jobs, including within working rural landscapes of forest and agricultural lands and in the expanding tourism and recreation industries. (A more detailed description of the economic and other benefits of land conservation is attached).
- Provide sufficient clean water and other ecological services for a growing U.S. population.
- Help ecosystems withstand the impacts of climate change so that they can continue to provide habitat for the full range of native species and serve the needs of human communities.
- Provide access to outdoor recreation and healthy exercise for every American from young people living in cities and suburbs to hunters and fishermen seeking traditional outdoor activities.
- Reflect the natural and historic heritage and cultural diversity of the American people.

Full and dedicated funding of the Land and Water Fund through this legislation would be an immensely important step forward, but in itself it is not sufficient to create the network of healthy natural areas and metropolitan greenspaces needed to sustain the character and quality of the lives of all Americans. A revitalized Land and Water Conservation Fund should be the foundation for the efforts of states, federal agencies, local communities and non-profit organizations to work together to restore and conserve whole watersheds and large landscapes for their multiple benefits.

The Conservancy also urges the Committee to include in any final legislation provisions to provide full and permanent funding to both the Payments in Lieu of Taxes (PILT) and Refuge Revenue Sharing programs. These important programs provide payments to counties where land has been taken off the local property tax roles and put into federal ownership. In some counties, protection of nationally significant natural resources impacts the tax base that funds local government services, including schools and public safety. Fully funding PILT and the Refuge Revenue Sharing programs would provide an important complement to fully funding LWCF and would honor the federal government's commitment to impacted communities.

Conservation of our country's land and water is not a luxury but is an essential part of our economy, our health and welfare and our way of life. While our country has made wonderful conservation progress over the last hundred years, we have not yet conserved sufficient land and water to protect the many values of natural lands and working landscapes against the threats they now face. We applaud Chairman Rahall for his leadership in proposing to fully fund the LWCF, the core component of a renewed commitment to conserve landscapes throughout the nation.

Title V—Alternate Energy Development

The Nature Conservancy supports the development of renewable sources of energy as an important strategy to mitigate climate change emissions. While desirable to reduce greenhouse gas emissions and diversify energy supplies, renewable sources of energy require much larger areas of land to produce the same amount of energy as the fossil sources they will replace. We, therefore, urge that renewable energy development be carefully planned and that any adverse impacts to wildlife habitat and ecosystem functions be fully remedied.

We strongly support the thrust of Title V to quickly evolve the process for development of wind and solar energy resources on public lands away from the present "first come, first served" right of way approach to a more comprehensive leasing approach, with appropriate provisions to allow an orderly transition from the current approach

We support the requirement in sections 501(b) and 502 to issue comprehensive regulations establishing best management practices, including incorporation of the full mitigation hierarchy (avoid, minimize, and if necessary offset) across the full range of adverse impacts of wind and solar development. Any such regulations should be in addition to and fully consistent with the provisions of the Endangered Species Act. These additional requirements, if strengthened as indicated below, will

[1] Polling of 800 voters throughout the United States was conducted from May 11–13 2009 by the bipartisan research team of Public Opinion Strategies (R) and Fairbank, Maslin, Maullin, Metz & Associates (D). <P>

help ensure that the development of wind and solar energy is accomplished in a rational manner while ensuring that such development involves the least possible adverse impact on other important values associated with and societal benefits derived from public lands. In partnership with the Environmental Law Institute, the Conservancy has recently completed extensive research on the use of mitigation in the U.S. We believe that the rigorous application of the mitigation hierarchy by Federal agencies using an ecosystem framework for making decisions can avoid severe environmental damage and can result in the much more effective expenditure of compensatory funds. A comprehensive approach to mitigation using new and existing State and Federal plans as a framework for decision-making can both improve environmental protection and facilitate siting of alternative energy facilities.

While we support the thrust of Title V, we also believe that its provisions can and should be strengthened in important ways:

- The siting of renewable energy facilities is hampered by a lack of the necessary scientific data on biodiversity impacts and governmental mechanisms to employ such data in comprehensive plans. A comprehensive long-range regional framework should be developed to collect the scientific data necessary to optimally site renewable energy facilities, consider cumulative impacts, provide for the full application of the mitigation hierarchy (avoid, minimize, or offset) with regard to environmental impacts, and coordinate energy and transmission development with other land uses.
- The Secretary of the Interior should, as an essential step in developing a comprehensive leasing approach, be required to identify areas of federal land suitable for wind and solar energy development that would minimize conflict with other uses including recreation and habitat for wildlife, taking into consideration completed and ongoing efforts to identify such areas and the results of consultation and coordination with other federal agencies, state and local officials, industry participants, environmental organizations, and other stakeholders. These planning efforts should define the total capacity (load limits) for renewable energy production from wind and solar resources in the geographic region covered by the plan and should include an analysis of the impact of full capacity utilization on other competing land and resource uses in the region.
- This will help ensure that the leasing program will:
  - consider the potential cumulative effects of a full build out of such facilities on biodiversity, water resources, including natural aquifers, springs, seeps, perennial or ephemeral streams, and washes, and other key resources within areas identified for leasing;
  - allow rational coordination with the improvement and expansion of necessary transmission facilities and other associated infrastructure;
  - facilitate the orderly development of facilities within areas made available for leasing; and
  - allow full development with the least possible impact on natural systems and other values and benefits derived from public lands.
- Title V should contain express and detailed siting criteria and require such criteria to be incorporated into the regulations implementing the leasing program. Inclusion of such criteria will allow Congress to ensure that the leasing program is implemented in a manner that minimizes the impacts of development on other resources and the need for associated infrastructure through economies of scale and "clustering" of development, where possible in already disturbed areas, while maximizing production—in other words, to help concentrate renewable development in areas that do not involve significant ecological impacts.
- Title V should specifically address water use by solar thermal facilities in desert basins. Given the extremely dry conditions in the regions likely to host significant solar energy development, even the modest water requirements of dry-cooled concentrating solar and photovoltaic facilities may represent considerable stress on the limited local water resources. In addition, climate change models project that the desert will become even drier in the future, making water resources in the desert all the more precious and subject to overuse. Wet-cooling of solar-thermal facilities may be incompatible with these dry ecosystems.

Therefore, we recommend that as a pre-condition of being granted a permit or lease, every solar energy developer should be required to submit for approval an evaluation of their water supply needs, a proposal for the source of that water, an assessment of potential impacts of their water use on biodiversity, a comprehensive water monitoring plan to identify any adverse impacts on the local water resources, and detailed mitigation measures for estimated water resource impacts including contingency measures for unforeseen impacts detected by later monitoring. As a condition for operation, the permitted entity should be required to pay for implementation of the approved water monitoring plan.

- Title V should provide additional guidance, consistent with and supplemental to regulations and guidance implementing the Endangered Species Act of 1973, concerning and mechanisms for the effective mitigation of the impacts of wind and solar energy development to encourage a shift from traditional, and frequently ineffective, small-scale, "on site" mitigation efforts to a much more effective, larger scale mitigation regime by:
  - incorporating the requirement to apply ecosystem-based management (as defined in section 3(6)) in the best management practices required by section 502(3) and in the regulations required by section 501(b);
  - when suitable private lands are not available allowing the Secretary to identify areas of land suitable as mitigation lands to offset the impacts of wind and solar energy development, and to withdraw those lands permanently from uses incompatible with accomplishing mitigation objectives; and
  - requiring that mitigation funds dedicated to restoration or enhanced conservation management of public lands be in addition to historical levels of appropriated funding dedicated management of those lands.

We recommend that income from such rents and royalties be allocated as follows:

- 20 per cent to the State within which the income from production is derived;
- 20 percent to the county or counties from which the income from production is derived;
- 45 percent to a newly established Treasury account designated the "Wind and Solar Energy Habitat Conservation Fund", to be available without further appropriation and available until expended, as supplemental funds to be used for conservation purposes over and above required mitigation in ecosystems with extensive wind and solar development by the Secretary of the Interior, transferred as supplemental funds for those purposes to other federal agencies, or granted for those purposes to states, tribes, or qualified non-governmental organizations, or, as determined by the Secretary, included as supplemental funds to the Land and Water Conservation Fund.
- For a specified period, 15 percent to fund improvements in the system for reviewing and resolving bids for leases for the development of wind and solar energy, with a specified cap on the maximum funding allocated to such purposes, with provision that following the specified period, these funds will be allocated to the Wind and Solar Energy Habitat Conservation Fund.

In order to allow realization of the full mitigation and conservation benefit of funds allocated to the Wind and Solar Energy Habitat Conservation Fund, we also recommend that non-federal recipients of such funds be specifically authorized to:

- Create an interest-bearing, non-wasting endowment for the management of mitigation lands; and
- Use such funds to satisfy matching funds or cost share requirements of any federal conservation program.

Modification of the provisions of Title V to adopt the recommendations above would, in our view, greatly strengthen its provisions and would facilitate the rapid and orderly development of wind and solar energy production facilities on federal land while also minimizing the impacts of such development on biodiversity, habitat, water resources, and other values derived from public lands and allowing for the full, effective, and sustainable mitigation of any such impacts.

Title VI—Outer Continental Shelf Coordination and Planning
Offshore Energy Development and the Creation of an Ocean Resources Conservation and Assistance Fund

The Nature Conservancy applauds the proposed creation of the Ocean Resources Conservation and Assistance Fund. Reinvesting a portion of OCS revenues into the protection, maintenance, and restoration of ocean, coastal and Great Lakes ecosystems is long overdue and was called for by the U.S. Commission on Ocean Policy. We strongly support these provisions of the bill.

In addition, the regional coordination and planning provisions for offshore energy development in Title VI could lead to significant improvements over the current processes. In particular, the Conservancy supports the bill's inclusion of an ecosystem-based and multi-objective context for planning as well, a regional approach and greater reliance on spatial data and spatial planning, and taking into account the potential impacts of climate change and the need to adapt to such change. To further strengthen the bill, we propose the following changes to ensure that regional planning fully considers ecological, economic, and social objectives for the allocation of ocean space, and adequately considers conservation priorities and marine ecosystem health.

- Expand the scope of regional strategic plans to address important issues in addition to offshore energy. We propose expanding the purpose and objectives of

this Title to allow the Councils to engage in more comprehensive planning for multiple offshore uses, including but not limited to offshore energy development. Authorizing the Councils to look holistically at ocean uses will better enable them to consider multiple objectives and cumulative effects. We would like to see this legislation support planning and actions that move ocean management towards a more multi-objective, integrated approach, rather than reinforcing non-integrated, sector by sector decision making. However, if a more comprehensive approach is not feasible at present, we suggest a phased approach where the Councils may start with offshore energy planning and then expand over time to incorporate additional management issues.

- Increase the number and geographic coverage of the regions. The regions currently proposed in H.R. 3534 do not align with existing regional governance structures, federal agency jurisdictions, marine ecology, and in some cases are too large to function effectively (i.e. Atlantic region). Moreover, certain regions that are experiencing the pressure of offshore energy development are excluded including the Great Lakes and island territories. We suggest the legislation reflect the nine regions as laid out in the President's Interim CMSP Framework, with the recognition that some regions like Alaska may need to be divided into sub-regions to recognize the geographic breadth and logistical constraints of planning and coordination at such a large scale.
- Stakeholder Input to the Councils. We recommend adding language to this Title ensuring stakeholder input to the councils and permitting stakeholders to be appointed to advisory committees or task forces as needed to obtain necessary expertise and advice as input into regional assessments and strategic plans.
- Council Leadership. To achieve science-based, multi-objective planning that appropriately accounts for ecosystem conditions and impacts, assessments and strategic plans need to be administered jointly by representatives from the Department of the Interior and the National Oceanic and Atmospheric Administration (NOAA). The Secretaries of Commerce and Interior should also share equal responsibility for appointing members and guiding and approving the work of the Councils.
- Plan Revisions. In reviewing and revising the Strategic Plans, we recommend adding language stating the process should be adaptive, include public participation, and use best available science.
- Establish Funding Source for the Councils. Presently there is no funding mechanism to support the assessments and strategic plans to be developed by the Regional Outer Continental Shelf Councils. Solutions include adding a specific authorization within the Department of Interior budget or amending the allocation within the ORCA fund to permit the Councils to use the funds in addition to the Regional Ocean Partnerships.
- Strengthen the definitions. In Sec. 3 of this bill, we recommend strengthening the definitions of ecosystem based management to make clear that cumulative impacts are more than just considered but the agencies are directly managing for them. In addition, the definition of "marine ecosystem health" should emphasize marine habitats in addition to species. There should also be provisions taking into account the need to adapt to climate change.

Title VIII—Gulf of Mexico Restoration

The Deepwater Horizon disaster has now become the largest offshore oil spill in U.S. history. The oil still spreading across the Gulf is also an unprecedented environmental catastrophe in one of the most important and productive ecosystems on Earth. Coming on top of decades of degradation, merely cleaning up the effects of the spill will not be enough to save the Gulf's ecosystems and all the benefits it provides for the people of the Gulf and the nation. We need a bold vision and comprehensive plan for reversing the long trend of decline and restoring the Gulf to good health. The Conservancy is grateful to the Committee for including the structure for this program in title VIII of the bill.

The health of the Gulf's ecosystems is important to the future of the Gulf Region and the nation. Long seen as a major producer of seafood, trade and energy, the Gulf is also home to globally important biological diversity. Warmed by subtropical waters and harboring a complex suite of habitats that includes barrier islands, hyper-saline bays, coastal marsh estuaries, mangrove forests, shellfish reefs, sea grass beds, coral reefs, deep water open ocean, and the delta of the largest river on the North American continent, the Gulf of Mexico is one of the most productive places on the planet. The lives and livelihoods of 24 million Americans living along this coast are linked to the health, resilience and sustainability of the Gulf's ecosystems. The economy of the United States as a whole is tightly linked to the energy, shipping and other industries that operate in the Gulf region.

The full impact of the spill on the Gulf's ecosystems will not be known for some time. Scientists tell us that a spill of this magnitude would have profound effects on the healthiest of ecosystems, but the risks to Gulf coastal habitats are greatly magnified by the decades of degradation that preceded it. A host of disturbances affecting the Gulf include alteration of critical freshwater and sediment inflows, construction of levees and canals in coastal wetlands, conversion and development of coastal prairies and forests, dredging and unsustainable harvest of shellfish beds, and incompatible use of coral reefs and sea grass beds that have been severely damaged. As a result, many thousands of acres of marshland and other habitats have been lost, fisheries and shellfish stocks have declined, dozens of species have become threatened or endangered, and the resiliency of these systems in the face of natural or man-made disturbances has been compromised. Degradation of our coast affects the services provided by these ecosystems. The ability to dampen storm surges is lost as marsh and barrier island habitat disappears, vital economic fisheries decline, the cost to maintain critical human infrastructure needs increases, and the way of life for millions of people becomes more threatened.

BP must be held accountable for the full cost and extent of damages associated with the effects of the spill, but given what's at stake, the nation's response must go well beyond cleaning up the current spill. With the degraded state of the Gulf, limiting our efforts to only cleaning up the direct effects of the spill will not be sufficient to sustain this critical ecosystem.

Our vision is to reverse the long decline of the Gulf to re-build a healthy and improving Gulf ecosystem that can continue to provide its many benefits to future generations. We need a robust long-term effort to protect and restore Gulf coastal ecosystems, across 5 states from Texas to Florida, restoring critical habitats and the ecological processes that sustain them. What needs to be done to achieve this vision is well understood:

- Restore clean freshwater in-flows to key estuaries, especially the Mississippi, providing the freshwater and sediments needed to re-build marshes while reducing the nutrient loads that create dead zones in the Gulf.
- Restore millions of acres of estuarine and coastal habitat, such as oyster reefs, seagrass beds, marshes and migratory bird areas that provide critical nursery habitat to re-build Gulf fisheries and protection for Gulf communities from storms and sea level rise.
- Ensure ongoing oil and gas development in the Gulf minimizes impacts to important natural resources, is carried out in safe and responsible manner, and contributes to the long-term restoration of Gulf ecosystems.

Title VIII creates a structure to coordinate these efforts across the entire Gulf ecosystem. Led by a chairperson working in the White House, a task force of agencies would integrate the many efforts that are ongoing and stimulate planning for the large-scale projects, especially restoration of freshwater flows and sediments, that are essential to recovering the biological bounty the Gulf once produced.

We have three suggested changes in the draft language:

- First, we urge that the Chair of the Task Force be given a stronger role in coordinating the environmental restoration work across federal programs. One means to this end would be the presentation of a combined Gulf of Mexico restoration budget as part of the President's budget presentation each year. This would highlight the projects and programs that are being carried out by each Federal agency to implement the restoration plan developed by the Task Force. A similar approach was taken in the 1980s to coordinate the $600 million acid rain research program carried out by the National Acid Precipitation Assessment Program.
- Second, we think that the Task Force should identify priorities for restoration and not simply list every project that every government agency might propose. And we believe that addressing the impacts of subsidence and erosion in the Mississippi River Delta should receive the highest priority in the early years of the effort. It is not necessary to reinvent the restoration agenda in the Delta. The work is ready to begin immediately and is of the greatest importance to the health of the entire ecosystem.
- Third, we urge that Congress find a dedicated source of funding to support this restoration effort. Crude oil and petroleum products are taxed today at a rate of eight cents per barrel to create the Oil Spill Liability Trust Fund that responds to the acute impacts of oil spills. The Gulf of Mexico ecosystem has been damaged by the chronic impacts of the same industry over many decades and it seems reasonable to us that this same tax mechanism be used to correct the damage that has been done. We urge that Congress increase the tax by ten cents per barrel and that these funds be dedicated to Gulf of Mexico restoration for a period of at least ten years. We fully appreciate that the tax is not the

jurisdiction of the Natural Resources Committee and will need to be pursued at a later point in the legislative process.

Summary

The provisions of H.R. 3534 discussed here are critically important to America's well being. This bill is about giving the American people the means to shape the future of the land and water so critical to the health of our citizens and to the character and quality of their lives. It is about carrying on the highly successful conservation tradition that filmmaker Ken Burns calls in his film on our National Parks, "America's best idea" in the face of a new wave of threats that could undo those conservation accomplishments. It is, in this very difficult and contentious world, about our being responsible citizens and remembering at this critical period in history what Theodore Roosevelt said a hundred years ago:

> "It is time for us now as a nation to exercise the same reasonable foresight in dealing with our great national resources that would be shown by any prudent (person) in conserving and wisely using the property which contains the assurance of well-being for (ourselves and our) children".

Thank you for the opportunity to present The Nature Conservancy's recommendations for H.R. 3534, The Consolidated Land, Energy, and Aquatic Resources Act of 2010.

Ms. BORDALLO. I would like to begin with you, Ms. Jones. I have a few questions here. Do you buy the argument that this bill would be a job killer or do you think it establishes a balance between various resource-dependent industries, including oil and gas, fishing, and tourism?

Ms. JONES. I think that continuing to do OCS exploration unsafely is the job killer. When you look at the number of jobs that are supported by having a healthy ecosystem, a healthy marine resource, commercial fishing, recreational fishing, tourism and tourism-related jobs, it is a substantial number of job.

We recognize that there are oil and gas jobs that are affected as well, but this is not just about oil and gas jobs, and it is not just about oil and gas exploration. It is about how we actually manage our ocean resources responsibly and how we make sure that the marine resources are healthy enough to support all of our coastal economies.

Ms. BORDALLO. Do you think the Discussion Draft adequately separates the planning, the leasing, and inspection functions in MMS, and does it address conflict of interest issues sufficiently?

Ms. JONES. There is no question that MMS is a broken agency. It has been demonstrated quite adequately, that it has been captured by the agency that is it supposed to regulate. The separation in the Discussion Draft I think is very useful, separating leasing, in particular, from the environmental analysis, from the revenue collection is particularly important.

I do think in addition to that there is a critical need to interject a broader view and a broader consideration in making these OCS decision because they affect, as demonstrated by the disaster, not to just oil and gas but other marine resources. I think one of the positive things in the bill as well is to include NOAA, for example, as our nation's oceans agency, and give them a more critical role in expressing their views about OCS decisions.

Ultimately the most important thing, however, is to make sure that the standard for pursuing OCS development is one that is protective of marine health. It is our view that it is more important to change the nature of the job than it is to restructure the agency, but we do think that the Discussion Draft provisions are helpful.

Ms. BORDALLO. Following up on your mention of NOAA, can you explain further what current expertise NOAA offers that should be included in the planning and the leasing process?

Ms. JONES. NOAA has the ability to do some of the widespread surveys that are needed to more fully develop our understanding and develop some baseline information that is lacking in the marine context. It is the agency where most of the marine resource experts are housed. The Fish and Wildlife Service also has expertise as does EPA and the Coast Guard. NOAA stands out, but we would also support the inclusion of some of those other resource agencies, making sure that as Mineral Management Service's successor makes these OCS decisions again there are a broader set of considerations, not just about oil and gas development but about the effect of that development on the environment and the effect on our coastal economies as well.

Ms. BORDALLO. Thank you. Thank you, Ms. Jones.

Dr. Dismukes, I have a couple of questions for you. You are obviously very concerned about the fact that the bill would repeal the deepwater royalty relief provisions from the Energy Policy Act, but I would like you to address a few facts.

There have been over 2,6000 deepwater leases issued since these royalty relief provisions came into effect. Companies bid over 9 billion for these leases, and the number of those leases that would have royalty free oil today zero. Because all of these leases have clauses that say that if the price of oil is greater than about $40 a barrel, there will be no royalty relief.

In 2008, companies bid roughly 4 billion for nearly 700 deepwater leases while oil was approaching $150 a barrel. I believe that it defies common sense to argue that any of those companies in 2008 or any of them today expect oil to go below $40 a barrel.

So how is it credible to say that repealing this provision would result in massive job losses and compromise national energy security?

Dr. DISMUKES. Well, I think for a variety of reasons. The provisions that are included in the Deepwater Royalty Relief Act provided, in addition, a floor for operators that want to develop these particular areas in case those prices do wind up falling. They provide security and a sound investment environment for them in the Gulf of Mexico, and if you look at one of the reasons why operators have returned to the Gulf, a lot of it has to do with the regulatory certainty and stability that has been created historically over the last 10 to 15 years from provisions, and like the Deepwater Royalty Relief Act.

So I would disagree that the legislation has not had a profound impact on the industry. Over 21 percent of our domestic crude oil supplies come from deepwater activities and from deepwater production. Most of that occurred after 1995 when the deepwater legislation was passed.

Ms. BORDALLO. Thank you. Thank you very much, Dr. Dismukes.

And now we have our Ranking Member, Mr. Cassidy from Louisiana who has a few questions.

Mr. CASSIDY. Thank you, Madam Chair.

Dr. Dismukes, again I feel like I am channeling folks from back home when I point out that when the Secretary says that his foot

is on the neck of BP, they actually feel as if it is on the neck of the roustabouts, the rig workers, you know where I am going with that.

Dr. DISMUKES. Yes, sir.

Mr. CASSIDY. Can you discuss if this, and one thing you just said is that there is a great need for certainty when it comes to drilling.

Dr. DISMUKES. Yes, sir.

Mr. CASSIDY. An atmosphere of uncertainty creates caution. Caution inhibits investment. Fair statement?

Dr. DISMUKES. Yes, sir, that is correct.

Mr. CASSIDY. So can you comment upon the economic impact of this job moratorium, if I may put it that way, the way folks back home describe it, upon the number of workers, the average wage per worker, those jobs relative to jobs in other fields, et cetera?

Dr. DISMUKES. Well, the oil and gas industry pays an above-average wage in south Louisiana, as you well know, and is a significant employer within the state as well as in other communities along the Gulf Coast. The current moratoria has the potential of being very devastating on the deepwater side as well as some of the activities that you commented on earlier about decreases in shallow water activity that we are starting to hear stories and information about.

There is, as I mentioned before, about 100,000 people just in the coastal parishes alone, in the coastal parishes and counties along the Gulf of Mexico that are dedicated to just the direct jobs associated with oil and gas activity, not the multiplier jobs I am talking about, but directly in exploration, directly in production, and directly in in-services.

If we look over the next six months just for the moratoria along, we are looking at probably in the near term as much as 3,000 jobs lost, increasing to as much as 6,000 by the time we approach the end of the moratorium up to a maximum of close to 10,000 jobs, if not more, and that is really based on our forecasts at the current price levels of where crude oil is. If those prices were to increase and oil and gas activity—that would be foregone oil and gas activity that we would be taking advantage of that we could not because of those increases in price, so certainly there are additional opportunities there.

Some of the conventional wisdom is that we may not make it to the six months, that we may go longer than that because the moratorium may——

Mr. CASSIDY. Keep in mind the moratorium technically has not started because it only begins with the first meeting, and the first meeting has not yet been held.

Dr. DISMUKES. Right.

Mr. CASSIDY. And then it is only after consideration of those findings, so indeed it truly may be that the moratorium, six-month moratorium which we are what—it is now May 20 I think was when it was first announced—it is going to be much longer than that.

Dr. DISMUKES. Right. And even if, depending on when we start this, at the end of six months it is probably not likely that you will have a flash cut into moving right after the six months. There may be another permitting process that will go anywhere from 90 to 120

days more than that that are going to create additional delays in bringing more rigs back on line, so those will create employment impacts as well.

Mr. CASSIDY. OK. And I think there is a misconception that this moratorium is going after Tony Hayward, in the sense that it is BP executive who is suffering from this, and he may be. He wants his life back. On the other hand, those folks I know in south Louisiana, south Mississippi and Texas who work on these rigs, can you describe the type of job that we are talking about?

Dr. DISMUKES. Anything from technical positions, tool pushers and people that are involved in the day-in and day-out drilling operations, engineering jobs, service jobs that will come out and provide catering services, that will provide fluids, drilling fluids, other types of support equipment that is needed, rental equipment, marine transport back and forth to the boats. There are a wide variety of people that service this industry from the shoreline.

Mr. CASSIDY. So, working-class, middle-class folks and small business people.

Dr. DISMUKES. Primarily, particularly in the service end of the business where you have a lot of homegrown businesses in Louisiana, a large portion of those activities being there in the service bases along the coast.

Mr. CASSIDY. Now, I think of a service base, for example, you mentioned catering, as being fairly cash-flow dependent. Have you done any analysis of how these small businesses will do if this moratorium stretches out?

Dr. DISMUKES. They will have to find other opportunities or they will have to start shutting down operations and laying people off.

Mr. CASSIDY. So the jobs moratorium, as somebody calls it back home, could truly be a jobs moratorium?

Dr. DISMUKES. It could result in significant job losses and it is of great concern for the state right now.

Mr. CASSIDY. I yield back.

Ms. BORDALLO. I thank the Ranking Member, and now I would like to recognize the gentlelady from California, Ms. Capps.

Ms. CAPPS. Thank you, Madam Chairwoman.

It is my conviction that every phase of the offshore drilling, exploration, development and production, can result in significant impacts to the environment, and that is why I believe the Interior Department should prepare an EIS, an Environmental Impact Statement, at every phase of the drilling process. We have made some gains in this area in the Pacific Region. For example, seismic surveys off the coast of Santa Barbara require a separate environmental review. I believe this is a good step to ensure meaningful opportunity for public participation in the OCS review process.

Ms. Searles Jones, do you agree that requiring more in depth environmental reviews would provide decisionmakers with critical information concerning potential significant impacts from drilling?

Ms. JONES. Congresswoman Capps, absolutely. One of the problems with the current OCS statutory scheme, which this Discussion Draft takes some great strides in addressing, is that decisions are made at such a great level of remove that commit us to a course of action that by the time we get to the ability to do any site-specific meaningful analysis that is full and fair, that considers a

range of alternatives, that displays all of that information for the decisionmaker and for the public, that really doesn't happen.

The exploration stage, the exploration permit is when that should happen, the current law requires the Minerals Management Service to approve permits within 30 days after the agency has deemed it to be submitted. The agency's course of practice has been to not start any environmental analysis until after it has deemed the exploration plan as submitted, and so it basically has created a situation where it feels like it only has 30 days to make that decision, and sometimes the lease sale analysis that has preceded the exploration plan is on the order of tens of millions of acres, which is not a meaningful scale of analysis, and we really cannot display the effects. We cannot have a discussion about what the consequences might be. The decisionmaker is denied information that it needs to actually make a good decision, and so that is one of the key features that this Discussion Draft advances that kind of analysis.

Ms. CAPPS. Thank you very detailed. Let me follow up. As the President has noted, one necessary outcome of BP's oil spill must entail lessening our reliance on fossil fuels and facilitating the implementation of a clean energy policy. This is a long-term goal.

When the Department prepares an EIS for offshore drilling, do you think it is a good idea to require a range of alternatives, including conservation, efficiencies, and renewable sources of energy that are capable of avoiding or minimizing the impacts of that drilling?

Ms. JONES. That is a great question, and I think two things that this Discussion Draft starts to do that we can do a little bit better is to make these decisions and make these considerations not just about oil and gas exploitation, but more broadly about energy production and how we are actually going to meet our energy needs, and to expand the range of alternatives to actually consider the effects on other sectors.

There is some language in the Discussion Draft that moves toward considering other types of resources as you are doing the assessments, and I think that is a very positive thing. Ultimately every commission that has ever looked at ocean governance has said we have to move away from single sector-by-sector-by-sector management.

When you are in a single sector statute like OCSLA, Outer Continental Shelf Lands Act, it would be a significant advance to have that kind of consideration of a broad range of alternatives that includes different types of energy development as well, and understands what the tradeoffs are in making an OCS decision, for example, for renewable site.

Ms. CAPPS. Madam Chair, I would like to request that this witness be charged with expanding on those thoughts in writing to submit to the record for the purposes of this hearing if it is your wish.

Ms. BORDALLO. Hearing no objections, so ordered.

Ms. CAPPS. Thank you. And I see the yellow light is on, I have a couple more questions which I could ask now or could I just press on if you do not mind, Mr. Ranking Member?

In my opinion, the Department should be required to assess the response and spill capacity for various spill scenarios in the environmental review process. Now, as we have seen all too clearly most cleanup efforts are only 10 to 15 percent effective. I saw that with the boom that was laid in 1969 off the Santa Barbara coast, the same effects were seen with the kind of spill response that is currently going on today. Requiring an analysis is critical to ensure that the public and decisionmakers are not misled into believing that spills can be effectively cleaned up if they really cannot. This CLEAR Act does require a thorough analysis of the impacts associated with various cleanup methodologies.

Now, here is my particular question to you, which may be need to be elucidated a little bit more in this bill. Do you agree that these impacts must be addressed up front, up front is the operative word, not after a spill occurs so that not only those methods that will—so that those methods that will avoid exacerbating spill impacts are allowed?

In other word, we should be clear ahead of time about which spill cleanup methods are appropriate in which scenarios.

Ms. JONES. I think that is absolutely true. One of the clearest lessons learned with the deepwater disaster is that we were not prepared. We did not have a spill response plan. We did not have adequate response capability. The states are in an exceedingly difficult situation because the spill response plan simply did not deal with a disaster of this magnitude.

It is also true that our technological approaches to actually dealing with oil spills are very limited and they have not changed much since the Exxon Valdez days, so we are doing the same thing we were doing in the Exxon Valdez, and with Exxon Valdez we only recovered about 10 percent of the oil.

Ms. CAPPS. Right.

Ms. JONES. So the reality is once it is in the water we have a very limited set of tools to deal with it, and it is absolutely our view that we should have to demonstrate under real world conditions that we are actually capable of dealing with a worst case spill before we actually go ahead and do exploration and production.

Ms. CAPPS. If I could ask a question at a different level now. Should the Federal Government provide additional technical and financial resources to assist the coastal states for their oil spill planning logistics response and recovery? Getting to the point that some of the particularities, as I mentioned about what is required in California now with our seismic studies that are required up front, should there be both a requirement and also the resources for doing it to particular states and regions that they could implement specific requests?

Ms. JONES. Absolutely.

Ms. CAPPS. And then finally, and thank you for you indulgence, Madam Chair, why is the Gulf of Mexico restoration program, which is not intended to supplant the existing natural resource damage process, why is this program important to understanding the chronic impacts of this oil spill?

Ms. JONES. That is a good question, and I think one thing that would be useful in the Discussion Draft would be to clarify the relationship of the restoration program in the bill with the existing

restoration work that will happen under the Oil Pollution Act of 1990, the existing natural resource damage assessment process.

We are witnessing an oil spill of a scale that we have never confronted before. We have a lot of lessons that we can learn from the Exxon Valdez, but the reality is that this is a completely new situation. We have never applied this volume of dispersants before. We have a lot of different habitat types up and down the coast from sandy beaches to marshes. The restoration effort will be very long term. It will require a lot of resources and a constant monitoring and evaluation of that process is very important.

And that is one of the other things that this bill helps do. Prevention is the most important thing, but once oil gets in the water if you do not have good information about your baseline conditions restoration is much more difficult. So, I think this bill does a lot of good things to both work on the prevention side, but also try to make the restoration side a little bit more possible.

Ms. CAPPS. Thank you. At what point would the baseline be made? Would that be part of this legislation or would that be up to the Gulf of Mexico restoration program?

Ms. JONES. If my memory is correct in terms of where the sections are in here, there is a provision in here that is part of the Outer Continental Shelf Lands Act amendment——

Ms. CAPPS. Yes, that is a baseline.

Ms. JONES.—that require some baseline collection.

Ms. CAPPS. Thank you. Thank you very much.

Ms. BORDALLO. I thank the gentlelady from California. Now I would like to recognize the Ranking Member, Mr. Cassidy.

Mr. CASSIDY. Ms. Jones, and I know you didn't intend to but there is oftentimes a kind of confusion where people suggest that renewable energy, as they typically mean solar and windmills which provide electricity, can in some way supplant transportation fuel, which is typically fossil fuel.

Now, are you suggesting that we can supplant our transportation requirements with renewables?

Ms. JONES. It is undeniable right now, Congressman Cassidy, that our economy is heavily dependent on fossil fuels. It is also undeniable that fossil fuels are ultimately a finite resource, and that there are significant——

Mr. CASSIDY. Yes, but that peak oil concept, if you will, has been continually disprove in the sense that we continue to have more oil discovered, more natural gas discovered. I accept that it is finite in the sense that everything is finite except maybe God, except definitely God. On the other hand, there still seems to be a heck of a lot more than we thought there was.

Ms. JONES. And let me be clear. I appreciate your perspective. I don't think that anyone on this Committee thinks—well, I actually don't know if this is true, but I suspect that no one on this Committee thinks that investments in renewables is a bad idea, and ultimately looking at the long term that that is the future of domestic energy production. Given our relative consumption rates and our production rates, clearly we need to invest in alternative forms of energy as well.

I appreciate what you say about this being a fossil fuel-based economy, and I think that is part of the challenge for us, is how

as a nation do we turn a little bit and turn the corner toward having a more diverse and renewable energy portfolio so that we can actually——

Mr. CASSIDY. But even if we say that currently windmills and solar provides about 1 percent of our electrical grid, and almost none of our transportation needs, there are a few electric cars but that is about it, and there is a big dead zone off the mouth of the Mississippi from fertilizer coming down the Mississippi, and that dead zone in the Gulf of Mexico is related to fertilizers used to grow corn to make ethanol, I am a little dubious about the renewables for transportation fuel. Your thoughts?

Ms. JONES. I am not an transportation fuel renewables expert but I would observe that part of what we need to do is to grapple more broadly with that energy policy question.

Mr. CASSIDY. But there is actually a dichotomy, isn't there, between electricity and transportation? And again, we often blur that line when we speak about renewables, we typically mean, again, biomass or windmills or solar, but that has almost no relationship at all to transportation needs.

Ms. JONES. I would agree that it has almost no relationship right now to the way our transportation system currently operates, but necessity is the mother of invention, and part of what I think is that if we invest more in different forms of technology, electric cars, hybrid cars, there are other alternatives out there, and they are worthy of pursuit.

Mr. CASSIDY. Dr. Dismukes, this CLEAR Act has really a kind of novel concept. If a state declares a moratorium on offshore drilling, then the Federal waters are off limit meaning that effectively the state owns a Federal resource. If you happen to live in Oregon or someplace else, I am specifically not saying Louisiana, you own that, and you can tell the people in Kansas even though your tax dollars are otherwise flowing and lowing, nevertheless we own it and we deny you access except for Louisiana. I am struck by that and I would like your perspective on this.

In Louisiana, we generate all this Gulf of Mexico activity, and yet the money is spread out across the nation, so it is kind of like what is theirs is theirs, and what is ours is theirs if I want to speak of it from a Louisiana perspective. What would be your thoughts?

Dr. DISMUKES. I would agree. Certainly there is an inconsistency in that policy. I do think that states should have some say-so over the activities that occur off their shoreline. There should be some sharing in that activity between the Federal Government and the state governments, but I don't think there has been historically that fair sharing relationship as it relates to the offshore energy production that has occurred to date in the Gulf of Mexico, particularly as it relates to the Gulf states.

You see those types of provisions for onshore production and mining on Federal lands where you have at least 50/50 sharing relationships, and when the reclamation dollars come back they are far in excess of 50 percent going back to the states, and yet you don't have those same kind of relationships for the Gulf Coast states for all the energy production that they do, and not just the energy production that is offshore, but all the supporting infra-

structure that is onshore that provides all the gasoline and the nature gas, and the gas transportation, and the gas processing, all the petrochemical facilities that are in the state that make these plastic bottles that makes the plastic that goes onto the name tags that are here, and all the infrastructure, the refined product pipelines that originate in the area, all the other aspects that are there because of that energy production.

Mr. CASSIDY. And so you don't have to comment on what I am about to say, the tyranny of the Federal Government is in the boot of our roustabouts and rig workers, denying them the opportunity to work for something which has no scientific basis—if you listen to the National Academy of Engineering—and it is also in the boot of our state in the sense that it allows other states—at least in this bill—to effectively have control over their Federal resources, but it doesn't accord the same to us. It continues to put in a job moratorium, which we would object to, on the grounds that it is their right. It seems like a bad deal for Louisiana.

I yield back. Thank you.

Ms. BORDALLO. I thank the gentleman, and I would like to thank the two witnesses, and I do apologize for the long time you spent here in the hearing room. We had votes, and so I thank you for your patience.

I would also like to remind you that the hearing record will be open for 10 days. The members of the Committee may have additional questions, so please be advised, and we hope that you can answer them in a timely manner.

Without further business here the Full Committee of Natural Resources now stands adjourned.

[Whereupon, at 2:13 p.m., the Committee was adjourned.]

[Additional material submitted for the record follows:]

[A letter submitted for the record by Blancett Ranches follows:]

Congressman Rahall:

Thank you for holding the hearings on new and revised regulations for an Industry that is long overdue.

I am a sixth generation rancher in Northwest New Mexico. Our family has being on the same lands for parts of three centuries. The ranch encompasses 30 sections of mostly federal lands and a federal grazing permit.

Early in January and again in March, we notified Conoco Phillips we would be putting cattle out on the lower end of the grazing allotment. After being off the ranch for the last five years, we returned this year with our cattle. We restored the water and wells that were not maintained in our absence. The grass was high, well and spring water clean, and the pastures well rested after a 5 years.

What was not right was the contamination on the well sites throughout the lower end of the ranch. We documented the problems with pictures and test results of the contamination with a local lab. All test results from the labs of contaminates were very high and well above limits allowable. Our information was given to Bureau of Land Management in Farmington and Washington, the New Mexico Game and Fish, your office and several other congressional offices in DC. To date BLM has made no attempt to address the concerns. We as ranchers are charged with the surface stewardship of the land and water for both our livestock and the wildlife. We are rendered powerless because the government entities will not enforce the regulations or recognize the standing of other resources.

The San Juan Basin is the largest producing Natural Gas field in North America. The resource dollars from the San Juan Basin number in the BILLIONS each year. Our Basin has been designated a sacrifice area for decades on the altar of the oil and gas industry. With as much money as is generated in our area, we should have the best run gas and oil operation in the Nation and instead it is the worst in the Rocky Mountain West.

Thank you.

Blancett Ranches (established in 1882)
Tweeti Blancett
Linn Blancett
Box 55
Aztec, NM 87410

The documents listed below submitted for the record have been retained in the Committee's official files.

- Alexander, Ryan, President, Taxpayers for Common Sense Action, Letter dated July 12, 2010, addressed to members of the House Committee on Natural Resources;
- Costner, Kevin, Founder, Costner Industries Nevada Corporation and Co-Founder/Partner, Ocean Therapy Solutions, WestPac Resources, Video attached via website;
- Defenders of Wildlife, Natural Resources Defense Council, and the Wilderness Society, Letter to Chairman Nick Rahall dated July 7, 2010;
- Emrich, Ron, Executive Director, Preservation New Jersey, Inc., Letter dated July 14, 2010, addressed to Chairman Nick Rahall;
- Erickson, Peggy, Executive Director, Heritage Tourism Alliance (HTA), Letter dated July 12, 2010, addressed to Chairman Nick Rahall;
- Giffords, The Honorable Gabrielle, a Representative in Congress from the State of Arizona, Letter submitted for the record;
- Griggs, Gary, Chair, Ocean Protection Council Science Advisory Team, and Director, Institute of Marine Sciences, University of California Santa Cruz, Document entitled "Ocean Protection Council Science Advisory Team Consensus Statement on Ocean Observing";
- Maryland Association of Historic Districts, Testimony dated July 12, 2010;
- Meadows, William H., The Wilderness Society, Letter dated July 13, 2010, addressed to members of the House Committee on Natural Resources;
- Pierpont, Ruth, President, National Conference of State Historic Preservation Officers, and Director, Division for Historic Preservation, New York State Office of Parks Recreation and Historic Preservation, Letter dated July 13, 2010, addressed to Chairman Nick Rahall;
- Project on Government Oversight, Document dated July 12, 2010, entitled "POGO Recommendations for Improvements to the CLEAR Act, H.R. 3534, to Strengthen Oversight and Accountability and End the Cozy Relationship Between Interior and Industry";
- Publish What You Pay, Document dated July 7, 2010, entitled "Recommendations on Enhancing Transparency and Accountability Measures in H.R. 3534";
- Smithberger, Mandy, Project on Government Oversight, Document entitled "CLEAR Act Provisions that POGO Hopes Will Survive Markup";
- Tercek, Mark R., President and CEO, The Nature Conservancy, Letter dated July 8, 2010, addressed to Chairman Nick Rahall;
- Trozzo, Charles L., Chairman, Alexandria Historical Restoration and Preservation Commission, Letter dated July 13, 2010, addressed to Chairman Nick Rahall; and
- Wayne, Lucy B., President, American Cultural Resources Association, Letter dated July 12, 2010, addressed to Chairman Nick Rahall.

[A letter submitted for the record by William H. Meadows, The Wilderness Society, follows:]

The Wilderness Society
1615 M Street NW
Washington, DC 20036
Ph (202) 833-2300

June 29, 2010

The Honorable Nick Rahall II
Chairman
House Committee on Natural Resources

1324 Longworth House Office Building
United States House of Representatives
Washington, DC 20510

Dear Chairman Rahall:

On behalf of The Wilderness Society and our 500,000 members and supporters, I am writing to commend you for your leadership in developing your legislative proposal to address the systemic fiscal and environmental problems that have accumulated and afflicted the Department of the Interior's onshore and offshore oil and gas programs for many years. Please include this letter supporting your proposal into the Committee on Natural Resources' June 30, 2010 hearing record.

The abject tragedy of the ongoing Gulf oil spill disaster reminds us of the paramount importance of allowing offshore oil and gas development to occur only in appropriate places, and only if there are effective policies and practices in place to assure the safety of workers and protection of the environment. Moreover, your proposal recognizes the grave risks to the terrestrial environment from the "drill at any cost" policies put in place during the past decade, policies which encouraged the extraction of oil and gas resources from our onshore public lands at the expense of a healthy environment. And, your proposal addresses a number of vexing problems in the fiscal management of our federal oil and gas programs that have needed to be rectified for a long time.

The "Discussion Draft" contains a number of vital reforms of the Outer Continental Shelf oil and gas program. We are especially supportive of provisions in Title II, Subtitle A that: strengthen environmental review standards for the protection of marine life and coastal areas; require specific and practical oil spill prevention and clean-up plans; require the use of "best availability technology" to assure safe drilling operations; and provide more flexibility for the Interior Department to review exploration and development plans. The Draft also contains important fiscal reforms of the offshore program.

Provisions of Title II, Subtitle B of the "Discussion Draft that are of priority importance to The Wilderness Society include: the "diligent development" provisions of Sec. 221(a); the directive limiting lease sales to no more than 3 per year per state in Sec. 224(b); the increases in yearly rental rates and minimum royalty rates in Sec. 224(c); the elimination of non-competitive lease sales in Sec. 224(d); the requirement that Interior mandate "best management practices" for operations on federal leases in Sec. 226; the bonding, reclamation, and restoration requirements of Sec. 227; the wildlife sustainability requirements in Sec. 228; and the chemical disclosure requirements in Sec. 229. With respect to the chemical disclosure provision in Sec. 229, we recommend amending the language to require that companies publicly disclose the chemicals they intend to use on federal drill sites at least 15 days before such chemicals are deployed, in addition to the requirement that disclosure of actual chemicals used be disclosed 30 days after operations are completed. We also strongly urge inclusion of Sec. 308 of H.R. 3534 as introduced, which repeals Sec. 390 of the Energy Policy Act of 2005 (EPACT). The misuse of this provision of EPACT has been well-documented by the Government Accountability Office, and should be repealed. Finally, we urge you to include Sec. 221 of H.R. 2337 introduced in the 109th Congress, which protects the rights of surface owners over federal oil and gas deposits.

We strongly support Title IV of the "Discussion Draft", which re-authorizes the Land and Water Conservation Fund with permanent funding, and re-authorizes the National Historic Preservation Fund, also with permanent funding, and establishes a new Ocean Resources Conservation and Assistance Fund. These programs have contributed so much to our nation's natural and cultural heritage, and we commend your commitment to assuring that they are perpetuated and adequately funded into the future. The BP oil spill highlights the need for sustained investment of OCS proceeds, through LWCF and the National Historic Preservation Fund, in land conservation. OCS production has always been predicated on the idea that the depletion of one national, non-renewable natural resource must be balanced by the long-term protection of threatened habitats, beaches, waterways, and other special places across America. As the devastating effects of the Deepwater Horizon spill demonstrate, OCS production can itself be a major threat to our nation's already-limited inventory of natural resources. Full, reliable funding of LWCF and the National Historic Preservation Fund is needed to provide a fair environmental return to the public, and accordingly, it is time to renew the commitment to conservation through full and permanent funding both programs.

Title V of the "Discussion Draft" is a major step forward in improving the federal authorization and environmental review processes governing wind and solar development on federal lands. We commend the Committee for calling on the Department

to promulgate rules within 18 months that clarify where and how leasing should proceed. We recommend that Sec. 501(f) require the Department to issue guidance setting out how the backlog of wind and solar applications inherited by this Administration will be worked down in an expedient, fair, and environmentally responsible manner. Additionally, we recommend inserting language in Sec. 502 clarifying that wilderness-quality lands, lands managed for conservation purposes, and important habitat should be avoided or excluded from leasing. Finally, we recommend that Sec. 503 authorize a portion of royalty and other revenues to be used to enhance the Department's ability to protect sensitive wildlife and ecosystems to mitigate the unavoidable impacts of solar and wind development.

Finally, with respect to Title VIII, we recommend that in authorizing significant spending on restoration, that care be taken to ensure that the restoration strategies are chosen with an eye towards the future. The Global Change Research Program has identified important projected climate-driven changes in the Gulf, for example, which need to guide restoration priorities or else there is significant risk that the restoration work could be in vain and the money wasted. Accordingly, we suggest that the definition of "restoration programs and projects" be clarified by adding the following clause to the end of section 801(d)(2): ",taking into account the future alteration of regional conditions reasonably projected to be brought about by climate change and ocean acidification;"

In conclusion, we greatly appreciate your leadership in taking on the daunting task of reforming the federal government's energy programs, both in terms of your proposals to assure a fair return to taxpayers for use of their assets by the oil and gas industry, and your commitment to protecting the environment from irresponsible practices, the consequences of which are all too apparent to anyone watching the nightly news. We look forward to working with your committee in moving these reforms forward.

Sincerely,

William H. Meadows

[A letter submitted for the record by the National Federation of Regional Associations for Coastal and Ocean Observing follows:]

National Federation of Regional Associations for Coastal and Ocean Observing

June 30, 2010

The Honorable Nick J Rahall, II
Chairman
House Natural Resources Committee
1324 Longworth Office Building
Washington DC

The Honorable Doc Hastings
Ranking Member
House Natural Resources Committee
1324 Longworth Office Building
Washington DC

Dear Chairman Rahall and Ranking Member Hastings:

We would like to express our strong support for section 605 of the Consolidated Land, Energy and Aquatic Resources Act of 2010 (Discussion Draft, Amendment in the Nature of a Substitute to H.R. 3534). Section 605 would establish the Ocean Resources Conservation and Assistance (ORCA) Fund for grants to coastal states, long-term ocean and coastal observations, and regional ocean partnerships. The importance of these investments is well documented, and unfortunately, the Deepwater Horizon disaster further demonstrates the tremendous need for such support.

Public Law 111–11 formally established and authorized an Integrated Coastal and Ocean Observing System in 2009 to provide sustained observations for our nation's coasts and Great Lakes. The ORCA Fund would allocate the resources to build, operate and maintain this system, providing a sustained source of emergency response capabilities, including critical ocean data and models for planners and responders, like those needed in the Gulf of Mexico now. But it will also allow the realization of broader benefits of an integrated ocean observing system, including those relevant

to climate and ecosystem trends, water,quality, marine operations, and coastal hazards.

A sustained ocean observing system for the nation is fundamental to improving our understanding and stewardship of the oceans and coasts. Had such system been fully funded and implemented before the Deepwater Horizon spill, responders would not be faced with the current dearth of ocean observations in the Gulf of Mexico that limits plume tracking, modeling, and response. We thank you for – our commitment to our coasts and Great Lakes and your support for an Ocean Resources Conservation and Assistance Fund.

Sincerely,

Mark R. Abbott, Dean, College of Oceanic & Atmospheric Sciences, Oregon State University

Alaska Ocean Observing System

Applied Science Associates, Inc. South Kingstown, RI

Larry Atkinson, Slover Professor, Old Dominion University

Nancy Bird, President, Prince William Sound Science Center

Wendell S. Brown Professor of Oceanography, University of Massachusetts at Dartmouth

California State Coastal Conservancy

Caribbean Regional Association for Integrated Ocean Observing

Council of American Master Mariners

Richard E. Dodge, Ph.D., Dean, Nova Southeastern University Oceanographic Center

Ian Dutton, President & CEO, Alaska SeaLife Center

John W. Farrington, University of Massachusetts-Dartmouth

Newell Garfield, Romberg Tiburon Center, San Francisco State University

Great Lakes Observing System

Gary Griggs, Institute of Marine Sciences, University of California, Santa Cruz

Dr. Burt Jones, University of Southern California Dr. Pete Jumars, University of Maine

Krista Kamer, California State University Council on Ocean Affairs, Science and Technology (COAST)

Michael Kellogg, San Francisco Public Utilities Commission

Steven E. Lohrenz, Chair and Professor, Department of Marine Science University of Southern Mississippi

Maritime Association of the Port of NY/NJ

Gil McRae, Director, FL Fish and Wildlife Conservation Commission

Captain Richard McKenna, Marine Exchange of Southern California

Mid-Atlantic Coastal Ocean Observing Regional Association

Mark A. Moline, Center for Coastal Marine Sciences, California Polytechnic State University

Mike Munger, Executive Director, Cook Inlet Regional Citizens Advisory Council

Northwest Association of Networked Observing Systems

Northeast Regional Association for Coastal Ocean Observing, Rye, NH

Ocean Inquiry Project, Seattle WA

Oregon Department of Land Conservation & Development

John Payne D POST Staff Scientist and US Coordinator

Pacific Islands Ocean Observing System

Port Gamble S'Klallam Tribe

Quinault Indian Nation

Roffer's Ocean Fishing Forecasting Service, Inc., West Melbourne, FL

Sea-Bird Electronics, Inc. Bellevue, WA

Dr. Peter Sheng, Professor, University of Florida

Mark Siegmund, Chairman, Society for Underwater Technology—Houston Branch, TX

Dr. Moby Solangi, President and Chief Executive Officer, Institute for Marine Mammal Studies, MS

Dr. Tom Soniat, Co-founder, Oyster Sentinel, LA

Southeast Coastal Ocean Observing Regional Association

Southern California Coastal Ocean Observing System

Elizabeth Smith, Chesapeake Bay Observing System

Sound Ocean Systems, Redmond, WA

Dr. Gregory W. Stone, Director, Coastal Studies Institute and WAVCIS Laboratory, LA

William Sydeman, Farallon Institute for Advanced Ecosystem Research

Darryl Symonds, Director of Marine Measurements Product Lines, Teledyne RD Instruments

John Ricker, Santa Cruz County of Environmental Health Services

Dr. Carolyn Thoroughgood, Professor of Marine Science and Policy, College of Earth, Ocean, and Environment, University of Delaware

Dr. Larry Warrenfeltz, IHMC Director for Sponsored Research, Florida Institute for Human and Machine Cognition, FL

Dr. Robert Weisberg, Professor, University of South Florida, FL

Neil Werner, Executive Director of the Hood Canal Salmon Enhancement Group

Dr. Brian Taylor, School of Ocean & Earth Science & Technology University of Hawaii at Manoa

J.P. Walsh, East Carolina University

Dr. Libe Washburn, University of California Santa Barbara

Woods Hole Oceanographic Institution

[A letter submitted for the record by the Southern Utah Wilderness Alliance follows:]

Southern Utah Wilderness Alliance
425 East 100 South
Salt Lake City, UT 84111

76 S Main Street
Moab, UT 84532

122 C Street NW, Ste 240
Washington, DC 20001

June 29, 2010

The Honorable Nick Rahall II
Chairman
House Committee on Natural Resources
1324 Longworth House Office Building
United States House of Representatives
Washington, DC 20510

Dear Chairman Rahall,

Thank you for your efforts in reforming the federal government's oil and gas program. We support the substance outlined in the current discussion draft of your bill, H.R. 3534, the Consolidated Land, Energy, and Aquatic Resources Act of 2009 (CLEAR).

We strongly support the inclusion Sec. 308 of H.R. 3534 as introduced, which repeals Sec. 390 of the Energy Policy Act of 2005 (EPACT). This section of law was abused under the previous administration to exempt drilling projects on public lands from important National Environmental Policy Act analyses. SUWA's recent settlement of a legal challenge brought against the federal government's misuse of this

practice has now ended the use of categorical exclusions in cases of extraordinary circumstances, making the case for a more permanent statutory fix even more compelling. The misuse of categorical exclusions in the Nine Mile Canyon region in particular threatened Utah's tremendous wilderness and cultural resources by exempting projects from cumulative impact analysis. Repeal of this section of law will go to further restore balance to the government's oil and gas program and protect Utah's nationally recognized wilderness resources.

Thank you again for your continued efforts to protect our natural resources and restore balance to the federal government's oil and gas program. We look forward to seeing your efforts result in robust and meaningful legislative reform.

Best Regards,

Richard Peterson-Cremer
Legislative Director
Southern Utah Wilderness Alliance

[A letter submitted for the record by the Powder River Basin Resource Council follows:]

June 29, 2010

The Honorable Nick Rahall, II
Chairman
House Committee on Natural Resources
1324 Longworth House Office Building
United States House of Representatives
Washington, DC 20510

Dear Chairman Rahall,

On behalf of the Powder River Basin Resource Council and our 1,000 members, many of whom are impacted by oil and gas development, I write to commend you on your efforts to implement much needed reforms for the oil and gas industry. We believe these reforms will help address some longstanding regulatory failings regarding onshore activities of the oil and gas industry. Please include this letter supporting your proposal into the Committee on Natural Resources' June 30, 2010, hearing record.

The elements of the legislation of direct importance to our landowners impacted by oil and gas development concern the need for the industry to be adequately bonded in order to assure reclamation and restoration of our lands. As you know, the coal industry, under SMCRA, is required to be bonded for the exact cost of reclamation. There is no reason to require less of the oil and gas industry.

We are also supportive of the provisions to reduce impacts from oil and gas drilling and to require this industry to disclose to the public and affected landowners chemicals they use in drilling and production operations.

Finally, we urge you to support an additional amendment to the bill to provide more real protections for split estate surface landowners when federal minerals are developed beneath their property.

We thank you for your leadership and look forward to the passage of this important and long overdue legislation.

With Best Regards,

Bob LeResche
Chair, Powder River Basin Resource Council

cc: Representative Lummis

[A letter submitted for the record by Larry Schweiger, President & CEO, National Wildlife Federation, follows:]

June 30, 2010

Honorable Nick J. Rahall
Chairman – House Committee on Natural Resources
1324 Longworth House Office Building
Washington, DC 20515

Dear Chairman Rahall,

On behalf of our four million members and supporters and 47 state and territorial affiliates we write in support of the Consolidated Land, Energy, and Aquatic Resources Act of 2010. While there are some areas that should be strengthened and improved, overall the CLEAR Act includes many of the most urgent and necessary reforms in response to the worst oil spill in Americas History.

We are especially encouraged by its provisions assuring better environmental, safety, leasing and permitting practices both offshore and onshore. Noteworthy are the repeal of categorical exclusions, mandatory Best Management Practices, as well as chemical disclosure of all materials related to exploration on federal leases.

We also support provisions in CLEAR that would promote responsible renewable energy development. By providing more certainty for project proponents while balancing the needs of wildlife and developers, the bill represents a significant step toward an expansion of renewable energy across the country. We are particularly pleased that CLEAR establishes a commercial wind and solar leasing program, requires Interior Department regulations on mandatory best management practices, off-site impact mitigation, and ongoing reclamation of a project site, and promotes fiscal management reforms intended to ensure the government is receiving "fair market value" for taxpayer-owned resources.

We appreciate the efforts in CLEAR to enhance investments in land, oceans and Great Lakes conservation and especially appreciate the dedicated funding for the Land and Water Conservation Fund. Unfortunately, as it now stands, the Ocean Resources Conservation and Assistance Fund does not adequately address the needs of the ecosystem most impacted by the BP spill. Much of the oil inundating the marshes and wetlands of the Mississippi Delta cannot be cleaned up. Instead, we will need to invest in the long-term restoration of the coast including funding large scale diversions of freshwater and sediment from the Mississippi Delta to these coastal areas. Through these efforts, we can over-time, restore the health of this internationally significant ecosystem. We urge that the bill be amended over the course of the legislative process to ensure dedicated funding for Mississippi Delta restoration and expedite the 16 projects already authorized in the Water Resources Development Act of 2007.

We also believe CLEAR could be improved with Education Act (H.R. 3644). This bill education programs nationwide. An educated citizenry will make better, more informed decisions about their energy sources.

Other measures we suggest to improve CLEAR:

- Increase royalty rates from believe the bill should include language on the split estate issue that remain private landowners that do not own the minerals under issue passed the full House of Representatives in the 110 2005 Energy Policy Act that requires BLM to act on a lease within 30 days of receipt of application. We feel this is far too short of time to do a thorough review of the application.
- Dedicate some portion of the to protect sensitive wildlife and ecosystems, including ensuring the conservation of lands essential for natural resource adaptation to unavoidable climate change. forms, first, enhance the Department's ability to guide development to smart places with appropriate mitigation requirements and second, restoration, mitigation, and land acquisition to help offset the impacts of development. Furthermore, we would recommend language to guide the Department's siting decisions during the 18 month transition to a leasing program.

Once again, thank you for your leadership in creating a balanced approach to our current energy needs and making an investment to our clean energy future. other members of the committee to enact the strongest and most effective oil spill response legislation possible.

Sincerely,

Larry Schweiger
President & CEO
National Wildlife Federation

[The Section-by-Section Analysis of the Discussin Draft follows:]

Consolidated Land, Energy, and Aquatic Resources (CLEAR) Act of 2009

H.R. 3534

Section-by-Section
Of The
Amendment In The Nature of a Substitute Discussion Draft
(June 22, 2010, 5:25pm)

Sec. 1. Short Title.—The title of the bill is the "Consolidated Land, Energy, and Aquatic Resources Act of 2009."

Sec. 3. Definitions.—

- The term "administrator" means the Administrator of the National Oceanic and Atmospheric Administration (NOAA)
- The term "affected Indian tribe" means an Indian tribe with federally reserved rights affirmed by treaty, statute, order, or other law.
- The term "alternative energy" means electricity generated by a "renewable energy resource", which is defined as wind, solar, geothermal, marine hydrokinetic, biomass, landfill gas, and qualified hydropower, as defined by Section 1301(c) of the Energy Policy Act of 2005 (26 U.S.C. 45(c)).
- The term "coastal state" is given the same definition as in the Coastal Zone Management Act, where it means any of the states bordering the Atlantic, Pacific, Gulf of Mexico, Long Island Sound, Arctic Ocean, or the Great Lakes. Puerto Rico and the insular areas are also included in the definition under the CZMA (16 U.S.C. 1453).
- The term "Department" means the Department of the Interior.
- The term "ecosystem based management" means an integrated approach to management considers an entire ecosystem, aims to maintain ecosystems in a healthy and sustainable condition, emphasizes the protection of the ecosystem as a whole, considers the cumulative impacts of all activities occurring within the ecosystem, explicitly accounts for the interconnectedness within an ecosystem, and integrates ecological, social, economic, cultural, and institutional perspectives.
- The term "Federal land management agency" means the Bureau of Land Management, U.S. Forest Service, U.S. Fish and Wildlife Service, and the National Park Service.
- The term "function" means authorities, powers, rights, privileges, immunities, programs, projects, activities, duties, and responsibilities.
- The term "important ecological area" means an area that contributes significantly to local or larger marine ecosystem health or is an especially unique or sensitive marine ecosystem.
- The term "Indian land" has the same definition as under the Indian Tribal Energy Development and Self-Determination Act of 2005 (25 U.S.C. 3501(2)), which includes all lands within Indian reservations, pueblo, or rancherias, lands held in trust by the United States for tribes or individuals, and certain other lands.
- The term "marine ecosystem health" means the ability of an ecosystem in ocean and coastal waters to support and maintain patterns, important processes, and productive, sustainable, and resilient communities of organisms, having a species composition, diversity, and functional organization resulting from the natural habitat of the region, such that it is capable of supporting a variety of activities and providing a complete range of ecological benefits.
- The term "minerals" has the same definition as in the Outer Continental Shelf Lands Act (OCSLA; 43 U.S.C. 1331 et seq.), where it means oil, gas, sulphur, geopressured-geothermal, and all other minerals authorized by Congress to be produced from federal lands.
- The term "nonrenewable energy resource" means oil and natural gas.
- The term "Outer Continental Shelf" has the same definition as in the Outer Continental Shelf Lands Act (OCSLA; 43 U.S.C. 1331 et seq.), where it means all submerged lands lying outside of 3 geographical miles (roughly 3 nautical miles) from the coastline of most states, and outside of 9 geographical miles (roughly 9 nautical miles) from the Gulf of Mexico coastlines of the states of Florida and Texas.
- The term "public land State" means Alaska, Washington Oregon, California, Idaho, Nevada, Utah, Arizona, Montana, Wyoming, Colorado, and New Mexico.

- The term "Regional Ocean Partnership" means collaborative initiatives between two or more states to implement policies or activities under authorities granted to the states under the Coastal Zone Management Act (16 U.S.C. 1451 et seq.).
- The term "renewable energy resource" means wind, solar, geothermal, biomass, landfill gas, incremental hydropower, free-flowing hydropower, wave, tidal, current, and ocean thermal energy.
- The term "Secretaries" means the Secretary of the Interior and the Secretary of Commerce.
- The term "Secretary" means the Secretary of the Interior.
- The term "surface use plan of operations" means a plan for the use and restoration of Federal lands for energy development approved by either the Bureau of Land Management or the Forest Service.
- The terms "Federal land", "lease", "lease site", and "mineral leasing law" have the same definitions as under the Federal Oil and Gas Royalty Management Act (30 U.S.C. 1701 et seq.).
- The term "Tribe" has the same definition as under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

Title I—Creation of New Department of the Interior Agencies

Sec. 101. Bureau of Energy and Resource Management.—This section would establish a Bureau of Energy and Resource Management (BERM), with a mandate to manage the leasing and permitting for renewable energy, non-renewable energy, and mineral resources on all onshore and offshore Federal lands in the United States; however, leasing on Indian lands would not be handled by BERM. The BERM Director would be appointed by the President and subject to Senate confirmation. Subsection (d) would provide additional authority and direction to the Secretary for conducting studies and collecting data that are necessary to fulfill the Secretary's environmental responsibilities under the Outer Continental Shelf Lands Act; a separate office within BERM would be responsible for managing the Bureau's environmental studies and analysis activities. Under subsection (f), the Bureau of Land Management and Forest Service would retain their authorities as the multiple-use managers of lands under their jurisdiction, and would be responsible for ensuring that energy production on Federal lands is done in an environmentally sound matter, through the identification of lands and waters that are eligible for energy development, the establishment of best management practices, the authorization of waivers to lease stipulations, the establishment and enforcement of appropriate financial assurances to ensure proper site reclamation, environmental site inspections, authority to issues notices of non-compliance for violations of permits and surface use plans, and other activities as deemed necessary by the Secretary. Bureau of Safety and Environmental Enforcement (BSEE; established in Section 102) employees would also have the authority to issue notices of noncompliance and issue civil penalties for land-use violations observed during BSEE inspections.

Sec. 102. Bureau of Safety and Environmental Enforcement.—This section would establish a Bureau of Safety and Environmental Enforcement (BSEE), with a mandate to carry out all the safety and environmental regulatory activities, including inspections, on all onshore and offshore Federal lands in the United States. The BSEE Director would be appointed by the President and subject to Senate confirmation. Subsection (d) would give BSEE the following responsibilities: oversight for BERM's OCS National Environmental Policy Act (NEPA) reviews; suspension or cancellation of leases in the event that activities under those leases threatens health or the environment; developing health, safety, and environmental regulations for operations on onshore and offshore federal lands, including mandatory Safety and Environment Management programs; conducting investigations; and implementing the new Offshore Technology Research and Risk Assessment Program established under Section 211 of this Act. Subsection (e) would require that BSEE inspectors be highly qualified and well-trained, and would establish a National Oil and Gas Health and Safety Academy ("Academy") for training the national oil and gas inspector workforce. Subsection (e) would also allow the Secretary to work with educational institutions and the oil and gas industry to create appropriate training and continuing education programs outside the Academy.

Sec. 103. Office of Natural Resources Revenue.—This section would establish an Office of Natural Resources Revenue (ONRR), which would be responsible for collecting and disbursing all royalties and other revenues from energy and mineral related activities on onshore and offshore federal lands, auditing such collections, and promulgating regulations relevant to revenue collection and management. Subsection (d) would create an independent program within ONRR to carry out auditing

and oversight of revenue collection. The ONRR would be headed by a Deputy Assistant Secretary appointed by the President and subject to Senate confirmation.

Sec. 104. Ethics.—This section would require that the Secretary of the Interior certify that all BERM, BSEE, and ONRR employees that interact with oil and gas companies are in full compliance with all Federal employee ethics laws and regulations.

Sec. 105. Direct Hiring Authority for Critical Scientific and Technical Personnel.—This section would allow the government to better compete for talent with industry by providing the Secretary authority to hire highly-qualified technical personnel for BERM, BSEE, or ONRR outside of the civil service system. In addition, subsection (c) would allow the Secretary to hire certain individuals for up to 4-year terms at enhanced salaries if those individuals bring extremely high levels of crucial expertise, provided that there are no more than 40 such hires at any one time at BERM or BSEE. Subsection (d) allows the Secretary to rehire former employees without a reduction of termination of their annuities.

Sec. 106. References.—This section would ensure that all references to functions that previously existed in the Minerals Management Service or in the Bureau of Land Management energy program are transferred to the appropriate new entities created in this Act.

Sec. 107. Abolishment of Minerals Management Service.—This section would formally abolish the Minerals Management Service (MMS), and ensure that all completed administrative proceedings, pending administrative proceedings, and pending civil actions related to MMS are not affected by this abolishment.

Sec. 108. Conforming Amendment.—This section would add the titles of the heads of the new agencies to the appropriate pay scale section of the U.S. Code.

Sec. 109. OCS Safety and Environmental Advisory Board.—This section would create a new safety and advisory board under the Federal Advisory Committee Act. This board would be tasked with providing to the Secretary advice on safety and environmental issues surrounding energy and mineral development issues on the Outer Continental Shelf.

Title II—Federal Oil and Gas Development

Subtitle A—Safety, Environmental, and Financial Reform of the Outer Continental Shelf Lands Act

Sec. 201. Short Title.—This title of this subtitle is the "Outer Continental Shelf Lands Act Amendments of 2010."

Sec. 202. Definitions.—This section would amend the Outer Continental Shelf Lands Act (OCSLA) to add a definition for "safety case". A safety case is defined as a body of evidence that provides a basis for determining whether a system is adequately safe for a given application in a given environment, and requirements for its use in offshore drilling operations have been adopted by a number of countries around the world, including Norway and the United Kingdom.

Sec. 203. National Policy for the Outer Continental Shelf.—This section would amend Section 3 of the OCSLA to require a more balanced approach to energy development that acknowledges the other resources of the OCS, and to emphasize that energy-related activities should be conducted without harming the marine, coastal, or human environments.

Sec. 204. Jurisdiction of Laws on the Outer Continental Shelf.—This section would amend Section 4 of the OCSLA to ensure that the laws of the United States also apply to renewable energy facilities on the OCS. Currently, U.S. laws clearly apply to oil and gas facilities, but court rulings indicate that renewable energy facilities, such as offshore windmills, may not be covered.

Sec. 205. OCS Leasing Standard.—This section would amend Section 5 of the OCSLA to clarify the authority of the Secretary to issue regulations related to operational safety and environmental protection on the OCS, and would require the Secretary to issue regulations mandating: independent third-party certification of crucial pieces of safety equipment (such as blowout preventers); new requirements for subsea testing and secondary activation of blowout preventers; independent third-party certification of the well casing and cementing procedures; adoption of safety and environmental management systems by operators on the OCS; and compliance with other environmental and natural resource conservation laws. The Secretary would also be required to consult with the Secretary of Commerce on any regulation that may affect the marine or coastal environment. This section would also require that the Secretary provide to the public, free of charge, any documents incorporated by reference into any OCS-related regulations.

Sec. 206. Leases, Easements, and Rights-of-Way.—This section would amend Section 8 of the OCSLA by adding three new subsections related to royalties and financial assurances. New subsection 8(q) would require the Secretary to conduct a bonding study at least once every five years to determine if financial assurance levels are adequate for operations on the OCS. New subsection 8(r) would require the Secretary to conduct a fiscal system review at least once every three years that would outline in-place royalty and rental rates and indicate whether the Secretary intended to modify those rates. New subsection 8(s) would require the Secretary to conduct a comparative fiscal review at least once every five years, in which would assess the overall oil and gas fiscal system of the United States and compare it to systems in place in other countries. Subsection (b) of Section 206 would disqualify a company from bidding for new leases if it was not meeting safety and environmental requirements on its existing leases, or if it had outstanding obligations under the Oil Pollution Act of 1990. Subsection (c) would amend the alternative energy leasing subsection of OCSLA to delete ambiguous language from Section 388 of EPACT (43 U.S.C. 1337(p)) that could be interpreted to allow non-energy development under the Secretary's offshore alternative energy leasing authority. The section would also provide for non-competitive authorizations if an applicant were seeking to carry out short-term meteorological or marine testing. Subsection (d) would require the Secretary to request a review by the Secretary of Commerce of any proposed lease sale. Subsection (e) would eliminate the authority of the Secretary to lease a tract greater than 5,760 acres.

Sec. 207. Disposition of Revenues.—This section would amend Section 9 of the OCSLA to provide for yearly mandatory funding of $900 million for the Land and Water Conservation Fund, $150 million for the Historic Preservation Fund, and 10% of total offshore revenues for a new Ocean Resources Conservation and Assistance (ORCA) Fund, as created by Section 605 of this Act.

Sec. 208. Exploration Plans.—This section would amend Section 11 of the OCSLA to strengthen and create new requirements for exploration plans, as well as eliminate the 30-day deadline for approval of those plans. Exploration plans would be required to include blowout scenarios with estimated timelines for drilling a potential relief well, and an analysis of the impact of a worst-case-scenario discharge from drilling. Categorical exclusions would no longer be allowed for approving plans, and a plan would only be able to be approved if the applicant has demonstrated capability and technology to respond immediately to a worst-case-scenario oil spill. Subsection (d) would add additional requirements for obtaining drilling permits, including a full engineering review of the well and safety systems that certifies that best available technology will be used. New subsection 11(j) adds additional requirements for deepwater wells, and new subsection 11(k) would provide additional authority for the disapproval of a plan if the exploration activities would probably cause damage to the marine, coastal, or human environments.

Sec. 209. OCS Leasing Program.—This section would amend Section 18 of the OCSLA to provide for additional consideration of environmental factors in the preparation of 5-year leasing plans. This section would also require consultation with the Secretary of Commerce during the preparation of those plans. In addition, a new subsection 18(i) is added, which would establish a research and development program designed to improve the ability to estimate oil and gas resources and address gaps in environmental data on the OCS.

Sec. 210. Environmental Studies.—This section would amend Section 20 of the OCSLA to require environmental studies, in cooperation with the Secretary of Commerce, at least once every three years of OCS areas where oil and gas lease sales are scheduled. Subsection (b) would direct the Secretary to conduct research on the impacts of deepwater oil spills and the use of dispersants.

Sec. 211. Safety Regulations.—This section would amend Section 21 of the OCSLA to require more frequent studies by the Secretaries of Interior and Homeland Security on the adequacy of health and safety regulations relevant to operations on the OCS. This section would also broaden the requirement to use best available and safest technologies, and require the Secretary to publish lists of the best available technologies for key areas of well design and operation, including blowout preventers and oil spill response technologies. New subsection 21(g) would mandate regulations requiring all operators to have safety cases before they could receive new permits to drill. New subsection 21(h) would create an Offshore Technology Research and Risk Assessment Program designed to research and assess industry trends, new drilling technologies, and oil spill response technologies, among other topics.

Sec. 212. Enforcement of Safety and Environmental Regulations.—This section would amend Section 22 of the OCSLA to require monthly inspections of drilling rigs, more frequent investigations of safety-related incidents on the OCS, in-

vestigations of all allegations brought by employees of operators or contractors, and certifications from operators, operators' Chief Executive Officers, and independent third parties regarding compliance with safety and other regulations.

Sec. 213. Remedies and Penalties.—This section would amend Section 24 of the OCSLA to increase civil penalties from $20,000 per day to $75,000 or $150,000 per day, depending on the violation. Subsection (b) raises the maximum criminal fine under the Act from $100,000 to $10,000,000.

Sec. 214. Uniform Planning for OCS.—This section would amend Section 25 of the OCSLA to strengthen and create new requirements for development and production plans, and to ensure that such requirements extend to all areas of the OCS, whereas in existing law the Gulf of Mexico is exempt. As with exploration plans, this section would require development and production plans to include blowout scenarios with estimated timelines for drilling a potential relief well, and an analysis of the impact of a worst-case-scenario discharge from drilling. Approval of plans through categorical exclusions would no longer be allowed. This section would also require applicants to provide a comprehensive survey of the marine and coastal environment within their proposed area of operations, and to use production platform as observation stations for collecting data for the Integrated Coastal and Ocean Observing System. Development and production plans would not be able to be approved unless the applicant has the demonstrated ability to effectively remediate a worst-case release of oil from activities conducted under the plan.

Sec. 215. Oil and Gas Information Program.—This section would amend Section 26 of the OCSLA to require lessees to provide additional data on drilling operations to the Secretary, and to provide it in electronic format in real-time, or as quickly as possible if real-time is not feasible. This section would also delete provisions requiring the government to pay for data reproduction costs.

Sec. 216. Limitation on Royalty-in-Kind Program.—This section would amend Section 27 of the OCSLA to eliminate the authority for the Secretary to conduct a regular royalty-in-kind program.

Sec. 217. Repeal of Royalty Relief Provisions.— This section would repeal the shallow-water-deep-gas, deep-water, and Alaskan OCS royalty relief provisions that were enacted in the Energy Policy Act of 2005 (EPAct) (P.L. 109–58).

Sec. 218. Registry Requirements.—This section would amend Section 30 of the OCSLA to clarify that U.S. immigration laws apply to facilities on the OCS, and to require that all vessels conducting operations on the OCS pursuant to the OCSLA, including drilling rigs, be flagged in the United States. This section also would add an "intention of Congress" section that states that energy development activities on the OCS should be conducted in a way so as to support domestic industry and jobs.

Sec. 219. Developing Innovations in Oil Spill Containment and Response Technologies.—This section would add a New Horizon Oil Spill Containment and Response Technology grant program to the OCSLA. This program would provide competitive grants for research into new technologies for preventing, modeling, responding to, and cleaning up from oil spills.

Subtitle B—Safety, Environmental, and Financial Reform of the Federal Onshore Oil and Gas Leasing Program

Sec. 221. Diligent Development.—This section would require the promulgation of regulations establishing diligent development benchmarks for oil and gas leases. The regulations would have to provide for extending those benchmarks in situations where diligent development is not possible due to environmental or other restrictions beyond a lessee's control.

Sec. 222. Reporting Requirements.—This section would require lessees to report twice a year on the steps that are being taken to develop each of their non-producing leases. This information would be put into an electronic searchable database available to the public. Currently, according to the Department of the Interior's Inspector General (OIG Evaluation C–EV–MOA–0009–2008, "Oil and Gas Production on Federal Leases: No Simple Answer," February 2009), the Department does not know exactly what is occurring on non-producing leases.

Sec. 223. Notice Requirements.—This section would require the Secretary of the Interior to notify the public, surface land owners, and holders of special use recreation permits (such as outdoor recreation companies, hosts of annual events, etc.) when relevant lands are being offered for oil and gas leasing.

Sec. 224. Oil and Gas Leasing System.—This section would amend Section 17 of the Mineral Leasing Act (30 U.S.C. 181 et seq.) to make changes in the federal oil and gas leasing system, such as requiring the receipt of fair market value, changing the bidding system from oral to sealed bids, changing the requirement of a minimum four lease-sales per state per year to a maximum of three lease sales per state

per year, allowing the Secretary to evaluate the value of the lands proposed for lease, and eliminating non-competitive leasing. The national minimum acceptable bid would be raised from $2 per acre to $2.50 per acre, and rentals would be raised from the current structure of $1.50/acre for the first five years and $2/acre for the remaining years, which has not been adjusted since 1987, to $2.50/acre for the first five years and $3/acre for the remaining years. The Secretary would also be given explicit authority to increase rental rates if necessary to enhance financial returns to the United States and to promote more efficient management of oil and gas resources on federal lands.

Sec. 225. Electronic Reporting.—This section would authorize the Secretary to inform Congressional committees of large pipeline right-of-way applications and proposed lease reinstatements electronically instead of through a paper copy, if the committee requests.

Sec. 226. Best Management Practices.—This section would require oil and gas operators on federal lands to adhere to best management practices, with site-specific adjustments allowed to account for special circumstances.

Sec. 227. Surface Disturbance, Reclamation.—This section would amend Section 18 of the Mineral Leasing Act to require the submission of interim and final reclamation plans along with each application for a permit to drill. Lessees who had not completed reclamation activities on existing leases no longer in production would be unable to obtain new leases. This section also requires the Secretary to set the amount of required financial assurances high enough to ensure that reclamation can be undertaken if necessary, and to establish reclamation standards.

Sec. 228. Wildlife Sustainability.— This section would direct the Secretaries of Interior and Agriculture to plan for and manage areas under their respective jurisdictions in order to maintain sustainable populations of native and desirable non-native species of plants and animals, consistent with the requirements of existing law. If conditions beyond the Secretary's control prevent sustainability, the Secretary concerned would be required to protect the survival of species and certify that management activities do not increase the likelihood of extirpation. The Secretaries would be required to establish monitoring programs using identified focal species to evaluate sustainability and to coordinate management at the federal and state levels.

Sec. 229. Online Availability to the Public of Information Relating to Oil and Gas Chemical Use.—This section would require the list of chemicals (as well as information about those chemicals) used in drilling or completing a well to be posted online within 30 days after completion of drilling the well.

Title III—Oil and Gas Royalty Reform

Sec. 301. Amendments to Definitions.—This section would add additional detail to the definition of "mineral leasing law" in the Federal Oil and Gas Royalty Management Act of 1982, as amended (FOGRMA) (30 U.S.C. 1701 et seq.); would clarify the definition of "designee" under FOGRMA in order to allow the Secretary to correspond with a designee only, as opposed to having to contact each individual lessee (that has designated a designee) in writing as is required under current law; would allow penalties to be assessed for permit violations as opposed to just lease violations as is currently the case; would include a definition of "compliance review" (increasingly used reviews of royalty payments that are less intensive than audits) in FOGRMA; and would modify a definition of "marketing affiliate" that existed in regulation by no longer requiring that the affiliate's sole function be the marketing of the lessee's production.

Sec. 302. Compliance Reviews.—This section would provide statutory authority for the Secretary to conduct compliance reviews of royalty payments, and require any uncovered discrepancies to be referred to an auditor. The Secretary would have to provide notice to payors that a compliance review was being conducted.

Sec. 303. Clarification of Liability for Royalty Payments.—This section would clarify that designees would be liable for royalty payments under a lease, and that lease owners and operators would be liable for their pro-rated share of payment obligations under a lease.

Sec. 304. Required Recordkeeping.—This section would require oil and gas records to be kept by payors for seven years instead of the current six, which would align that timeframe with the statue of limitations for the government established under the Royalty Fairness and Simplification Act of 1995 (P.L. 104–185) to collect unpaid royalties.

Sec. 305. Fines and Penalties.—This section would amend FOGRMA to double fines for underpayment or late payment of royalties, and would also double the pen-

alty for theft. These penalties have not been increased since 1983. The section would also extend the statute of limitations for oil and gas leases held by violators.

Sec. 306. Interest on Overpayments.—This section would eliminate the requirement, under current law, that the Federal government pay interest on royalty overpayments made by operators. This would eliminate the incentive that operators have to make errors in their favor on their royalty calculation and receive a guaranteed return of the payment made in error plus interest.

Sec. 307. Adjustments and Refunds.—This section would eliminate the opportunity for lessees to make adjustments to their royalty obligations after a compliance review or audit is completed on a lease in question, and would limit the ability to make adjustments to four years after the date royalties were initially due. Currently, lessees are allowed to make adjustments for a full six years even after MMS has already completely a compliance review or audit.

Sec. 308. Conforming Amendment.—This section would repeal a section of FOGRMA that related to a study on noncompetitive leases that was due in 1983.

Sec. 309. Obligation Period.—This section would establish that in the case of an adjustment made by a lessee that results in an underpayment, the lessee would be obligated to repay that amount (plus interest) from the date the lessee makes the adjustment, thus extending the statute of limitations on that royalty payment. This would enable OFEML to audit such lease during the ensuing six-year cycle.

Sec. 310. Notice Regarding Tolling Agreements and Subpoenas.—This section would allow the Secretary to correspond only with the lease designee in the case of subpoenas or agreements to pause the statute of limitations.

Sec. 311. Appeals and Final Agency Action.—This section would extend the timeframe for the Secretary to issue final decisions on any appeals on demands or orders to pay royalties or penalties to 48 months, from the current 33 months.

Sec. 312. Assessments.—This section would repeal a section of FOGRMA that prohibits the Secretary from imposing assessments on payors who chronically submit erroneous royalty reports.

Sec. 313. Collection and Production Accountability.—This section would establish a pilot project for the automated transmission of electronic data from offshore wellheads and meters to the federal government, in order to improve the accuracy and efficiency of data and royalty collection.

Sec. 314. Natural Gas Reporting.—This section would require the Secretary to implement the steps necessary to ensure accurate reporting of heat content values of natural gas, which is a key component to determining the amount of royalties owed..

Sec. 315. Penalty for Late or Incorrect Reporting of Data.—This section would establish a penalty for companies that file late or incorrect data, to be set at a level the Secretary would determine is sufficient to ensure that companies file correct data on time, but no less than $10 per incorrect line of data. The filing of late or inaccurate reports creates considerable administrative difficulties for the government, and charging a penalty for faulty reporting has shown in the past to incentivize the filing of fully accurate and on-time data. A similar penalty was previously imposed by regulation, but was repealed last year.

Sec. 316. Required Recordkeeping.—Section 103 of FOGRMA currently gives the Secretary of the Interior the authority to require lessees, operators, or anyone involved in developing, producing, transporting, purchasing, or selling oil or natural gas from federal lands to provide records to the federal government upon request, if the Secretary implements such authority by rule. The current regulations promulgated under section 103, however, apply only to lessees and operators, ignoring the federal government's authority to audit natural gas *purchaser*s. Section 216 would require the Secretary to amend existing regulations to encompass the full authority granted under FOGRMA.

Sec. 317. Limitation on Royalty-In-Kind Program.—This section would eliminate the ability for the Secretary of the Interior to run a regular program for taking oil or gas royalties in kind..

Sec. 318. Shared Civil Penalties.—This section would eliminate a disincentive for states and tribes to diligently pursue royalty violators. Under current law, any civil penalties that are collected under FOGRMA due to the work of State or Tribal auditors are divided evenly between the states or tribes and the Federal government. The amount the state or tribe receives from the civil penalty is then subtracted from the amount of money they would have received under their cooperative agreements with MMS. This means that, currently, state and tribal auditors receive no benefit for any work they do in identifying royalty violators.

Sec. 319. Applicability to Other Minerals.—This section would extend the civil and criminal enforcement authority in FOGRMA, as amended to coal and other solid

minerals on federal lands, as well as to solid mineral mining or alternative energy development on the Outer Continental Shelf.

Sec. 320. Entitlements.—This section would require the Secretary to publish final regulations regarding procedures for reporting royalties on entitled shares of production from unitized leases when lessees do not actually sell their share of production from that lease.

Title IV—Full Funding for the Land and Water Conservation Fund

Subtitle A—Land and Water Conservation Fund

Sec. 401. Amendments to the Land and Water Conservation Fund Act of 1965.—This section would establish that all language in this subtitle would amend the Land and Water Conservation Fund (LWCF) Act of 1965 (16 U.S.C. 460l-4 et seq.).

Sec. 402. Extension of the Land and Water Conservation Fund.—This section would extend the authorization of the LWCF until 2040.

Sec. 403 Permanent Funding.—This section would provide for $900 million to be available to the LWCF each year out of OCS receipts without further appropriations.

Subtitle B—National Historic Preservation Fund

Sec. 411. Permanent Funding.—This section would provide for $150 million to be available to the Historic Preservation Fund (HPF) each year out of OCS receipts without further appropriations, and would extend the authorization of the HPF until 2040.

Title V—Alternative Energy Development

Sec. 501. Commercial Wind and Solar Leasing Program.—This section would establish a leasing program for wind and solar projects on Federal lands, in contrast to the special-use permits and rights-of-way authorizations that are used now. The Secretary would not be allowed to lease Forest Service lands for renewable energy over the objections of the Secretary of Agriculture. Final regulations establishing a leasing program would be required to be published within 18 months after the date of enactment, and leasing would be required to commence no later than 90 days after issuance of the regulations. Subsection (d) would eliminate the ability to site commercial solar or wind projects on BLM or Forest Service land using a right-of-way or special use permit, although subsection (f) would allow rights-of-way or special use permits to be issued for projects that have submitted a plan of development or installed a data collection device prior to the date of enactment of the bill. Subsection (e) would allow for the issuance of noncompetitive leases for noncommercial testing purposes, and the Secretary would have the authority to award preference to holders of noncompetitive leases during a commercial lease sale. Subsection (g) would require the Secretary to promulgate diligent development requirements for solar and wind leases.

Sec. 502. Land Management.—This section would require the Secretary to issue regulations for solar and wind leasing, establishing the lease terms, bonding requirements, and land reclamation requirements.

Sec. 503. Revenues.—This section would require the Secretary to set rates for rentals, royalties, etc., at a level to ensure a fair return to the United States and encourage development of wind and solar energy on federal lands.

Sec. 504. Recordkeeping and Reporting Requirements.—In order to allow for future audits or compliance reviews of renewable energy production on federal lands, this section would require lessees, permit holders, or renewable energy operators to maintain records for seven years.

Sec. 505. Audits.—This section would provide authority for the Secretary to conduct audits of onshore wind and solar leases.

Sec. 506. Trade Secrets.—This section would allow confidential or proprietary information to be made available by the Secretary to other federal agencies if necessary to carry out the provisions of this Act or other federal law.

Sec. 507. Interest and Substantial Underreporting Assessments.—This section would allow interest to be charged on late royalty payments for wind and solar leases, and also would establish a civil penalty of up to 25% for underpayments, in addition to making royalty violators subject to the civil penalty provisions of FOGRMA. The Secretary would have the authority to waive penalties if the underpayment is corrected before the payor receives a notice from the Secretary of that

underpayment, and for other reasons. This section would also establish joint and several liability for royalty payments on a lease.

Sec. 508. Indian Savings Provision.—This section would ensure that the rights and interests of Indian tribes are not affected by this Subtitle.

Title VI—Outer Continental Shelf Coordination and Planning

Sec. 601. Regional Outer Continental Shelf coordination.—This section would address the need for long-term, coordinated planning to guide OCS energy development within the context of other activities occurring in OCS regions established in the Atlantic, Pacific, Gulf of Mexico and Alaska.

Sec. 602. Regional Outer Continental Shelf Councils.—This section would establish Regional OCS Councils (Councils). Council membership would include representatives of relevant Federal agencies, coastal State Governors, affected Tribes, and representatives from stakeholder groups such as the relevant Regional Ocean Partnership, Regional Fishery Management Council, and interstate marine fisheries commission.

Sec. 603. Regional Outer Continental Shelf strategic plans.—Strategic Plans would be prepared and completed by each of the Councils within 2 years after completion of an initial OCS Region assessment and would be used by the Department in developing 5-year OCS leasing plans under the OCS Lands Act.

Sec. 604. Regulations.—This section would direct the Secretaries to promulgate regulations to administer this Title.

Sec. 605. Ocean Resources Conservation and Assistance Fund. A percentage of all OCS revenues would be deposited into an Ocean Resources Conservation and Assistance (ORCA) Fund, established by this section, which would provide grants to coastal states and Regional Ocean Partnerships for activities that contribute to the protection, maintenance, and restoration of ocean, coastal and Great Lakes ecosystems including: the development and implementation of comprehensive, science-based plans for monitoring and managing the wide variety of uses affecting the oceans, coasts and Great Lakes ecosystems; activities to improve the ability of those ecosystems to become more resilient and adapt to and withstand the impacts of climate change and ocean acidification; planning for and managing coastal development to minimize the loss of life and property associated with sea-level rise and the coastal hazards resulting from it; research, assessment and monitoring that contribute to these purposes; strengthened planning for coastal State oil spill response; and the implementation and operation of an integrated ocean observation system.

Sec. 606. Waiver.—This section would exempt the Councils from the Federal Advisory Committee Act.

Sec. 607. Transition Period.—To ensure uninterrupted leasing and development of our nation's OCS resources while the Strategic Plans are being prepared, this section would allow the Secretary to continue the preparation and execution of 5-year plans under the OCS Lands Act, and the leasing of areas for offshore alternative energy under the existing alternative energy rule, until the Strategic Plans are approved.

Sec. 608. Alternative Energy on the Outer Continental Shelf.—Prior to approval of a strategic plan, the Secretary of the Interior would continue to implement the rule for Renewable Energy and Alternate Uses of Existing Facilities on the OCS. Approval of strategic plans would not affect projects for leases approved under that rule, nor tracts of the OCS for which competitive alternative energy leasing process under that rule has been initiated prior to submittal of the Plan for approval.

Title VII—Miscellaneous Provisions

Sec. 701. Repeal of Certain Taxpayer Subsidized Royalty Relief for the Oil and Gas Industry.—This section would repeal the shallow-water-deep-gas, deep-water, and Alaskan OCS royalty relief provisions that were enacted in the Energy Policy Act of 2005 (EPAct) (P.L. 109–58). Subsection (c) would repeal language from EPAct that provided for lease extensions and royalty relief in the National Petroleum Reserve-Alaska.

Sec. 702. Conservation Fee.—This section would impose a fee of $2 per barrel of oil, or 20 cents per million Btu of natural gas, for production from existing federal onshore and offshore leases. This fee would expire on December 31, 2021.

Sec. 703. Leasing on Indian Lands.—This section would ensure that nothing in the bill would amend or modify leasing as it is currently carried out on Indian lands by the Bureau of Indian Affairs.

Sec. 704. Offshore Aquaculture Clarification.—This section clarifies that the Secretary of Commerce and the Regional Fishery Management Councils do not have the authority to develop or approve fishery management plans for the purposes of

permitting or regulating aquaculture in the Exclusive Economic Zone of the United States.

Sec. 705. State Moratoria.— This section would prohibit the Secretary from issuing a lease on OCS lands that are seaward or adjacent to a coastal State which has a moratorium on offshore oil, gas, and mining activities.

Sec. 706. Liability for National Wildlife Refuges.— This section would amend the National Wildlife Refuge System Administration Act of 1966 to hold any person or instrumentality which destroys, causes the loss of, or injures a refuge resource, or any living or nonliving resource of the refuge system or marine national monument, liable to the United States. This section authorizes the Secretary to use the amounts recovered for costs of response actions and damage assessments.

Sec. 707. Strengthening Coastal State Oil Spill Planning and Response.— This section would amend Section 306 of the Coastal Zone Management Act of 1972 to provide grants, not to exceed $750,000, to eligible coastal States to revise relevant plans of management programs to ensure sufficient oil spill response capabilities.

Sec. 708. Federal Coordination and Collaboration—This section would direct the President to establish policies and processes to promote better coordination and collaboration between Federal agencies with ocean and coastal related functions, to ensure adequate public comment and to support Regional Ocean Partnerships.

Sec. 709. Information Sharing.—This section would amend Section 388(b) of the Energy Policy Act of 2005 (Public Law 109–58) to require other federal agencies to provide data and information to the Secretary of the Interior in support of the Coordinated OCS Mapping Initiative.

Sec. 710. Savings Clause.—This section would ensure that no funds from this Act would be able to pay any cost that any responsible party under the Oil Pollution Act of 1990 is liable for.

Title VIII—Gulf of Mexico Restoration

Sec. 801. Gulf of Mexico Restoration Program.—This section would establish a Gulf of Mexico Restoration Task Force, composed of the heads of the relevant Federal agencies and the Governors of the Gulf Coast States, to develop and publish a long-term restoration plan within one year after the date of enactment. The Plan would identify processes and strategies for coordinating and implementing Federal, State, and local restoration programs and projects, using the best-available science.

Sec. 802. Gulf of Mexico Long-Term Environmental Monitoring and Research program.—This section would direct the Secretary through NOAA to establish a long-term, comprehensive marine environmental monitoring and research program on the impacts of the Deepwater Horizon oil spill on the marine and coastal environment of the Gulf of Mexico, to remain in effect for a minimum of 10 years. The program would be developed in cooperation with the USGS and in consultation with the National Oceanographic Leadership Council, the Gulf Coast States, academic institutions, and other monitoring experts. Data from the program would be available to governmental and non-governmental personnel and the public.

Sec. 803. Gulf of Mexico Emergency Migratory Species Alternative Habitat Program.—This section would establish an emergency migratory species alternative habitat program to support projects along the Northern coast of the Gulf of Mexico to ensure that migratory species have alternative habitat available for use outside of areas impacted by the oil spill.

[A Summary of the Discussion Draft follows:]

Summary of the
Discussion Draft
Amendment in the Nature of a Substitute
[of June 22, 2010 (5:25 p.m.)]
H.R. 3534

The *"Consolidated Land, Energy, and Aquatic Resources (CLEAR) Act "*

- The Discussion Draft maintains and builds upon the ***"Consolidated Land, Energy, and Aquatic Resources (CLEAR) Act" (H.R. 3534),*** as introduced by House Natural Resources Committee Chairman Nick J. Rahall last year and which was the subject of two days of hearings by the committee. In recognition of the enormous sea change caused by the Deepwater Horizon incident, the draft would enact significant and wide-ranging amendments to ensure that oil and gas development in the U.S. is done efficiently while protecting human

safety and the environment. The draft would also create an Oceans Resources Conservation and Assistance Fund (ORCA) with oil and gas leasing revenues and fully fund the Land and Water Conservation Fund (LWCF) and the Historic Preservation Fund (HPF).

The Discussion Draft would:

Reorganize and Consolidate Energy Leasing Programs for Greater Efficiency & Effectiveness

- Abolish the Minerals Management Service and divide it into three separate entities:
  - o The Bureau of Energy and Resource Management (BERM), which would manage leasing & permitting both offshore and onshore oil and gas and renewable energy-related activities, and conduct necessary environmental studies;
  - o The Bureau of Safety and Environmental Enforcement (BSEE), which would conduct all inspections and investigations, and issue health, safety, and environmental regulations for both offshore and onshore oil and gas and renewable energy-related activities; and
  - o The Office of Natural Resource Revenue (ONRR), which would collect all offshore and onshore oil and gas and renewable energy-related revenues.
- Ensure that only qualified individuals serve as oil and gas inspectors under strict ethical standards.
- Create a training academy for federal oil and gas inspectors.

Improve the Federal Offshore Leasing Program's Safety & Environmental Protections

- Eliminate the use of Categorical Exclusions under NEPA to approve exploration or development plans.
- Require the inclusion of meaningful blowout and worst-case scenario response plans in all drilling plans.
- Require applicants to have technology that is demonstrated to be able to respond to a worst-case release of oil.
- Ensure compliance with environmental and natural resource conservation laws.
- Extend the 30-day deadline for the review of exploration plans to 90 days.
- Require monthly inspections of all drilling rigs.

Create a Robust Planning Process for Energy Development on the Outer Continental Shelf

- Establish regional ocean councils for the Atlantic, Pacific, Gulf of Mexico, and Alaska regions, which would prepare marine spatial strategic plans to guide OCS energy development.
- Direct 10% of OCS revenues into a new Ocean Resources Conservation and Assistance (ORCA) Fund, which would be used to protect, maintain, and restore ocean, coastal, and Great Lakes ecosystems.
- Increase the involvement of NOAA in the oversight of offshore drilling activities.

Improve Federal Onshore Energy Leasing Programs

- Require federal oil and gas lessees to diligently develop their leases.
- Repeal Section 390 of the Energy Policy Act of 2005 relating to categorical exclusions.
- Impose "best management practices" on oil and gas lessees to ensure they operate in an environmentally sustainable manner.
- Establish a competitive wind and solar leasing program for Federal lands, while allowing non-competitive leases for research and testing.

Improve the Federal Oil and Gas Royalty Collection Program

- Permanently end the Royalty-In-Kind program, which was the source of a major scandal regarding overly-cozy relationships between private industry and government regulators.
- Eliminate the practice of paying interest to oil and gas companies when they overpay royalties.
- Enhance the ability of the government to go after oil and gas lessees that chronically or intentionally shortchange the American people of their rightful royalties.
- Repeal unnecessary royalty relief provisions.

Fully Fund the Land and Water Conservation Fund, the Historic Preservation Fund and the Oceans Resources Conservation and Assistance Fund

- Provide mandatory full funding, beginning in 2011, for the Land and Water Conservation Fund (LWCF), the Historic Preservation Fund (HPF), and the Oceans Resources Conservation and Assistance Fund (ORCA).
- Assess a conservation fee on existing leases that are producing oil or gas from 2011 through 2021 to pay for full funding of the LWCF, the HPF, and the ORCA.

Establish a Restoration Planning Program for the Gulf of Mexico

- Establish a Gulf of Mexico Restoration Planning Program to ensure that Federal and State restoration efforts are coordinated and based on the best available science to achieve the maximum restoration benefits for species, habitats and communities in the Gulf.
- Establish a long term monitoring and research program to ensure the impacts of the spill on the marine and coastal environment are fully documented, understood, and mitigated.
- Establish an emergency habitat restoration and establishment program to ensure that species that migrate through the Gulf, particularly waterfowl and other birds, have habitat available outside the areas impacted by the spill.

[A letter submitted for the record by Pat Sweeney, Director, Western Organization of Resource Councils, follows:]

WORC
Western Organization of Resource Councils
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June 29, 2010

The Honorable Nick Rahall, II
Chairman
House Committee on Natural Resources
1324 Longworth House Office Building
United States House of Representatives
Washington, DC 20510

Dear Chairman Rahall,

I am writing to express the support of WORC and its members for your bill, the Consolidated Land, Energy, and Aquatic Resources Act of 2009, H.R. 3534. WORC agrees that reforms are needed to ensure that our federal energy resources are managed in a safe and fiscally-sound manner, particularly in the areas of onshore oil and gas development. Please include this letter of support in the Natural Resource Committee's June 30, 2010 hearing record.

As you know, many of WORC's members are farmers, ranchers and other rural landowners who are directly affected by the development of federal energy resources. We are not opposed to energy development, but we believe that changes are needed to defuse the controversies surrounding irresponsible oil and gas development.

We urge you to include further protections for surface owners over federal oil and gas reserves, and repeal of the categorical exclusions from environmental review created by the Energy Policy Act of 2005. The CLEAR Act with these additions will provide badly needed changes to planning, leasing and development of onshore federal oil and gas resources.

The Gulf disaster has focused the nation's attention on the dangers of offshore drilling, yet many of the same risks apply to onshore oil and gas drilling, particularly in the case of federal minerals:

- The Bureau of Land Management (BLM) has multiple, often conflicting responsibilities including land use planning, environmental review, leasing, revenue collection, permitting, inspections, and enforcement.
- Limited resources force trade offs between facilitating development, protecting multiple uses, exercising oversight, and protecting the interests of taxpayers.

- Use of toxic chemicals poses risks to health, safety and the environment, yet the oil and gas industry is exempted from many environmental standards with which other industries must comply.
- People living in affected communities don't have the information they need to test their air or water for pollutants because little, if any, information about toxic chemicals used is made available to the public.
- The people who rely on the land, air and water bear the brunt of the impacts, but have little or no ability to ensure responsible development. Onshore, this is often farmers and ranchers, who own the land above federal oil and gas.
- Corporate liability is limited: In the case of onshore drilling, bonding requirements are 50 years out-of-date, putting taxpayers and landowners at risk for the cost of cleanups.

Your bill includes common sense reforms that would address many of these critical issues, and help ensure that an appropriate balance is struck between developing our important federal oil and gas resources and protecting drinking water, air quality, agricultural lands, wildlife habitat, and the health of communities.

These provisions from Title II, Subtitle B are of particular importance to WORC:

Bonding and Reclamation

Sec. 227 requires complete and timely reclamation of lease tracts, and restoration of any adversely affected lands or surface waters, through Interim and Final Reclamation plans that restore oil and gas sites to a condition approximate or equal to that which existed prior to the surface disturbance, including restoration of natural vegetation and hydrology, habitat restoration, salvage, storage and reuse of topsoils, control of erosion, invasive species and noxious weeds, and natural contouring.

Sec. 101(f)(6) requires reclamation bonds sufficient to assure the completion of reclamation if the work were to be performed by the Secretary in the event of forfeiture. This requirement will result in long-overdue updates to BLM's fifty-year-old onshore oil and gas bonding standards, which have been repeatedly criticized by the Government Accountability Office and others.

Chemical Disclosure

Sec. 229 requires public disclosure of the often-toxic chemicals used in drilling and completion of oil and gas wells on federal leases, giving people living near oil and gas sites the information they need to test their drinking water supplies and protect their families.

Best Management Practices

Sec. 226 requires the use of safety and environmental standards (now voluntary) to ensure the sound, efficient, and environmentally responsible development of oil and gas in a manner that avoids, minimizes, and mitigates actual and anticipated impacts from oil and gas development.

In addition, we urge inclusion of the following:

Protections for Surface Owners

As you know, millions of acres of federal oil and gas lie beneath private land. Under current law, the Stockraising Homestead Act of 1916, landowners have limited rights to consultation and compensation, and face serious damages to their land and way of life. While Sec. 223 requires notification of surface owners in advance of leasing and permitting, additional protections are needed. We strongly urge you to include Sec. 221 of H.R. 2337 from the 110th Congress.

End Categorical Exclusions

"Categorical exclusions" created by the Energy Policy Act of 2005 (EPAct) create a short cut to required environmental review and analysis for various types of oil and gas activities. We also urge inclusion of Sec. 308 of H.R. 3534 as introduced, which repeals Sec. 390 of EPAct.

We thank you for your leadership on these critical issues, and look forward to working with you and your committee toward passage of the CLEAR Act.

Sincerely,

Pat Sweeney, Director
Western Organization of Resource Councils

[A letter submitted for the record by the Theodore Roosevelt Conservation Partnership follows:]

THEODORE ROOSEVELT CONSERVATION PARTNERSHIP
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202–639–8727
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June 30, 2010

Honorable Nick J. Rahall II
Chairman
House Committee on Natural Resources
1324 Longworth House Office Building
Washington, DC 20515

Honorable Doc Hastings
Ranking Member
House Committee on Natural Resources
1203 Longworth House Office Building
Washington, DC 20515

Dear Chairman Rahall and Ranking Member Hastings:

The hunting, fishing and conservation organizations listed below would like to thank you and other members of the House Committee on Natural Resources for addressing many of the concerns of sportsmen regarding the impacts of energy development on fish and wildlife in the discussion draft of the Amendment in the Nature of Substitute for the Consolidated Land, Energy and Aquatic Resources Act of 2010 (H.R. 3534).

We are pleased with the overall approach allowing pre-leasing analysis, evaluation of development plans before permitting and better coordination with federal and state agencies for offshore development. We also support this legislation addressing the deficiencies in policy and process that may have lead to the current problems in the Gulf of Mexico and the mitigation of impacts and restoration of habitats and values hurt by the BP spill. Specifically, we applaud the following provisions of H.R. 3534 and urge your continued support of these important points:

1. Establishment of the independent Office of Environmental Science;
2. Commitment to fully fund the Land and Water Conservation Fund at $900M without the need to go through annual appropriations;
3. Establishment of a "due diligence" standard;
4. Notification of affected stakeholders before leasing and development and the opportunity for public involvement in the process;
5. Adjustments to the leasing process for onshore lease sales and making Best Management Practices mandatory;
6. Inclusion of reclamation and wildlife sustainability planning, protection of corridors and more effective monitoring processes;
7. Clear direction for coordination with other federal and state agencies;
8. Requirement for disclosure of chemicals involved in energy development;
9. Establishment of a leasing process for solar and wind development on federal lands;
10. Establishment of the Ocean Resources Conservation and Assistance Fund;
11. Establishment of liability for damages to national wildlife refuges; and
12. Clarification that the changes contained will not affect states' authority to manage fish and wildlife within their boundaries and their ability to manage hunting and fishing.

We understand that in response to the tragedy in the Gulf, energy policy will be considered in the near future and we applaud the committee for beginning the process to address the needs of fish and wildlife in H.R. 3534. Please enter this letter into the official hearing record and contact any of the organizations listed below for assistance with issues involving fish and wildlife and energy development.

Sincerely,

Gordon Robertson
American Sportfishing Association

Ralph Rogers
North American Grouse Partnership

Mike Schlegel
Pope & Young Club

Joe Hamilton
Quality Deer Management Association

Chris Wood
Trout Unlimited

Thomas M. Franklin
Theodore Roosevelt Conservation Partnership

Bruce Leopold
The Wildlife Society

Gray Thornton
Wild Sheep Foundation

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